United States Court of Appeals
for the Second Circuit

APPENDIX

77-1150

B p/s

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 77-1150

UNITED STATES OF AMERICA,
Appellee,

—v.—

AMREP CORPORATION, RIO RANCHO ESTATES, INC., ATC REALTY CORPORATION, HOWARD W. FRIEDMAN, CHESTER CARITY, HENRY L. HOFFMAN, and DANIEL FRIEDMAN,
Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

JOINT APPENDIX OF UNITED STATES OF AMERICA AND ALL DEFENDANTS

Volume V—Pages A-2721 to A-3400

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(Government Exhibit 158-A received in evidence)

MR. ARKIN: Excuse me, Mr. Kaufman, the writing at the bottom of that page, will you take it off?

MR. KAUFMAN: Yes.

(Mr. Kaufman read from Government Exhibit 158-A in evidence to the jury)

Q Mr. Switt, did you make any further attempts to sell your property?

A Yes, we did.

Q What did you do?

A My wife called out to some paper in Albuquerque. We put ads in there a few times.

Q Did you get any response from those ads you put in the Albuquerque paper?

A I don't know if they were authentic or not. We did get some responses.

MR. FLEMING: Move to strike that.

THE COURT: Strike the answer.

Q As a result of the ads that were placed in the newspapers, were you able to sell the land?

A No, sir.

Q Did you place ads in any other newspaper?

A I think she placed it in the New York Times once or twice.

MR. ARKIN: Move to strike that, if your Honor please.

THE COURT: Sustained. You cannot tell us what you think.

THE WITNESS: We did put it in the New York Times.

Q Is that your best recollection?

A Yes, we did put it in the New York Times.

Q As a result of that, were you able to sell your land?

A No, sir.

Q Did you go back to Albuquerque again?

A Yes, sir.

Q About when was that?

A I think I went back the following year. I did go back the following year.

Q Sometime in 1974?

A '74.

Q Did you go by yourself?

A I went by myself.

Q Did you go to your property at that time?

A No, I didn't.

Q What did you do in Albuquerque?

A I wanted to check out this man Heins. I wasn't satisfied with our deal with him.

Q Did you go to any other real estate brokers in Albuquerque?

A I stopped at three brokers. I was informed by them that he was associated with the Rio Rancho Estates.

MS. CROSS: Your Honor, I would object to that and move to strike the answer.

THE COURT: Sustained. What somebody else told you isn't admissible here.

Q Did you list your property with any of the other brokers in Albuquerque?

A No, I didn't.

Q Did you try to?

A No, I didn't.

Q You still own your property today, Mr. Switt?

A Yes, sir.

MR. KAUFMAN: No further questions, your Honor.

THE COURT: We will adjourn for lunch. Return at 2:00 o'clock, please.

1 t (Luncheon recess)

AFTERNOON SESSION

2:15 P.M.

(In open court - jury present)

LEON SWITT, resumed.

THE COURT: You may proceed.

CROSS EXAMINATION

BY MS. CROSS:

Q Mr. Switt, my name is Lee Cross, I represent Henry Hoffman in this case.

ON direct examination I believe you mentioned the Crosswicks County Day School.

A Crosswicks Country Day School.

Q Is that a private school which your wife owns?

A That's right, at that time. She doesn't know.

Q She did at that time own the Crosswicks Country Day School?

A That is right, she and I owned it together.

Q Your wife kept the books on the school, didn't she?

A Pardon me?

Q Your wife kept the books for the school?

A Yes, ma'am.

Q Now, this land that you bought at Rio Rancho, did you and your wife buy it or was it bought for the school?

A Me and my wife bought it.

Q You and your wife bought it?

A That's right.

MS. CROSS: Could I have these marked.

(Defendant Howard Friedman and Henry Hoffman Exhibits CC, CD, CE and CF marked for identification)

Q I will start with this one.

Showing you what has been marked as Exhibit CC for identification, do you recognize that package?

A Yes, ma'am.

Q What are they?

A They are checks that we paid off for Rio Rancho.

Q What account are those checks written on?

A They are wrote on mine and my wife's account. We owned the Crosswicks Country Day School, we had an account all in together.

Q These are the checks that you sent in to Rio Rancho?

A That is right.

Q Let me also show you Exhibit CD.

A That's right.

Q What are they?

A The same kind of checks.

Q Checks that you sent to Rio Rancho?

A That's right.

Q CE, what are they?

A Checks that we paid for Rio Rancho.

Q These are checks you sent for the Rio Rancho account?

A Yes.

Q CF?

A The same thing.

Q I believe there are some checks here that are a different color, are there not?

A Yes, they are different color, but they have the same account number. They are the same account you see on the bottom there, ma'am.

Check them both out, they both have the same account number.

Q These checks, the pink ones are on your own account?

A No, we have a joint account. I have my name on some checks, my wife has her name on some checks, and we have the school's name on some checks, all the same account.

Q The pink checks have your name?

A That's right.

Q And the green checks have the Crosswicks Country Day School name on them?

A Yes, if there are any blue checks, they have my wife's name on. They are all the same account.

Q You keep all of your accounts together with the school's account?

A That's right, all the same account.

Q What is your present address, sir?

A Prospect Hill Apartments, Flemington, New Jersey.

Q How long have you lived there?

A I lived there since July.

Q Do you own or rent there?

A We rent there.

Q Where did you live prior to that?

A I lived at Country Lakes.

Q In where?

A Country Lakes.

Q Country Lakes?

A That's right.

Q Is that Country Lakes Estates?

A No, that is Country Lakes, Browns Mills, New Jersey.

(Continued on next page)

Q What is Custer Trail in Supposa Circle?

A That is the street where we lived in Country Lakes. That is the Browns Mills address.

Q How long did you live in Country Lakes?

A I lived there, I think, two years.

Q And did you won your house there?

A Yes, ma'am.

Q And where did you live prior to Country Lakes?

A I lived in Clear Brook.

Q Clear Brook?

A Right.

Q And that was in Cranberry, New Jersey?

A That is in Cranberry, New Jersey.

Q Did you own a house there?

A No, that was a condominium. We owned a condominium there.

Q How long did you live in Clear Brook?

A I lived there, I think, two years.

Q Where did you live prior to that?

A In Crosswicks, New Jersey.

Q Did you own a house there?

A Yes, ma'am.

Q How long did you live in Crosswicks?

A I think we lived there seventeen years.

Q The house in Crosswicks, New Jersey, how much did you pay for that when you bought it?

A I wouldn't remember now. We bought that twenty-some years ago.

Q You have no idea; can't remember?

A It's hard to remember.

See, after I bought it, we did a lot of building on to it. We built a school there, we built everything on there.

I think it was paid around -- around 16,5 or 20,000, somewheres in that bracket.

Q How much did you sell that house for when you moved to Clear Brook?

A Well, when we sold that place, we built a school on the grounds, we built a barn on the grounds, we blacktopped the whole place there.

Q How much did you sell it for, sir?

A We sold it -- we sold it with everything together -- I think we sold that, just the property -- we didn't sell the home alone, we sold everything together.

Q How much did you sell it for?

A The school and everything together I think we sold for $200,000.

Q And when you bought the house in Clear Brook, how much did you pay for that house?

A I think we paid 33 or -- 33-something, 33,9.

Q And that was a couple of years ago?

A Yes. That was four years ago, I think.

Q And when you sold that, how much did you sell it for?

A I sold that -- I think I sold that -- we did a lot of repairing, a lot of changes in that, too.

I think sold that for 41,000.

Q So you have, in the last few years, sold the school and the house in Crosswicks, New Jersey and your condominium -- is that the condominium in Clear Brook?

A That's right.

Q Both of those you sold?

A That's right.

Q Have you ever owned any real estate other than places where you lived in other than Rio Rancho?

A Yes, I have.

Q And where else have you owned real estate?

A Flemington, New Jersey.

Q In Flemington, New Jersey?

A Yes.

Q And how much real estate did you own there?

A I owned a big farm there.

Q You owned what?

A I owned a farm there.

Q How many acres is that?

A Oh, a hundred-some acres in that farm.

Q And when did you buy that farm?

A Well, that was bought in sections.

Part of that farm my dad bought around 1918, I think, right after World War I.

And then I bought part of that land, I think, in 1941, just before World War II, and I combined them together.

Q How much did your dad buy?

A My dad had there, I think, around fifty acres there.

Q How much did he pay for it, do you know?

A I wouldn't know. I was just an infant at that time.

Q And you said you bought some more after World War II?

A Yes, I did.

Q And how much more did you buy?

A I bought 67 acres.

Q And how much did you pay for the 67 acres?

A I paid and then I built a barn -- you see, I just bought barren land and then I built a barn on to it.

Q How much did you pay for the 67 acres?

A I had $37,500, I think.

Q $37,500?

A That's right.

Q And you now have 117 acres total?

A No. That was all sold back in 1955.

Q That was all sold in 1955?

A That's right.

Q How much did you sell it all for?

A Well, that was sold a copule of different parcels.

You want the total or what I got out of it after I got through paying the government?

Q Total.

A Total.

I got $168,000.

Q $168,000?

A That's right.

Q Have you owned any other property other than where youlived?

A No, no.

Q Does your wife do part-time work in real estate?

A Yes, ma'am.

Q She is a part-time real estate broker?

A That's right.

Q And does she buy and sell land in New Jersey?

A Very little. She just does it more or less as a hobby.

Q But she does it part-time?

A Well, I think she sold one or two parcels of land in her whole operations.

Q But she has books and everything on mortgage rates and so on?

A She has a salesman's license. She just got that this past year and a half ago. She got her salesman's license this past year and a half ago.

Q But she has been interested in real estate, right?

A No. Just this past year and a half.

Q This account on which you wrote these checks that you paid for Rio Rancho, was that a business account?

A Well, that was our personal account. We had one account all together.

Q You just lumped together all of the school's payments --

A Everything all together, because we owed everything together and we did everything together. We had everything together.

Q Did you prepare the tax returns for the Crosswicks Day School?

MR. KAUFMAN: Objection, your Honor.

THE COURT: Overruled.

A Oh, I suppose the accountant did. I don't know. My wife always took care of that. I didn't take care of that end of it.

Q You don't know --

A No, I don't know what happened.

Q You don't know whether she prepared an income tax return?

A No. She had a CPA do all the work.

Q Would the income from the school go into this account, this account which you had?

A Yes, ma'am.

Q So the income from the school would be deposited into that account?

A With whatever I made and what she made, we all put it right into one --

Q Everything went in there?

A That's right.

Q Any expenses from the school you paid out of that account?

A We paid out of that account.

Q You say you had an accountant prepare these returns?

A That's right.

Q You have never seen these returns?

A Oh, I may have seen them when I signed them, paying the taxes when we paid our income tax.

Q Did you have to sign the returns?

A Sure I had to sign them.

Q Was that a joint return, I mean a return for the Crosswicks Day School?

A I was part owner of it. I had to sign it.

Q In preparing those returns, the accountant would list the income for the school, is that true?

A I assume so, yes.

Q And he would list the expenses?

A I assume so, yes.

Q And do you know whether he listed as an expense the checks you paid for Rio Rancho?

A No. That was not -- that was not charged against the school, that was charged against personally.

Q You know that.

A I know that for a fact.

Q And yet the only time you have seen the return is to basically sign it?

A Well, I --

Q Answer the question, please.

MR. KAUFMAN: Objection, your Honor.

THE COURT: Sustained.

A Well, when I signed them --

THE COURT: Wait, wait.

Q You said, did you not, that you had signed the returns for the school, is that correct?

A Yes, that's correct.

Q Did you look through the returns before you signed them?

A Sometimes I did, sometimes I didn't.

MR. KAUFMAN: Objection, your Honor, to this whole line.

THE COURT: I don't know what you are talking about. Just go on to another line of questioning.

Q When you purchased your land at Rio Rancho, you purchased it with a view of retiring there, did you not?

A That's right.

Q And they discussed at the dinner, did they not, the climate and the amenities of living in the Albuquerque area?

A That's right.

Q And they showed a film, did they not, that had a lot of material in it about living at Rio Rancho?

A That's right.

Q And, in fact, you have written to the company and requested that they send you recreation bulletins, haven't you?

A Yes.

Q And you got a brochure on homes, did you not?

A I think we did. We got a lot of brochures.

Q I will show you what has been admitted as Defendant Exhibit D, and ask you if you recognize that (handing).

A Yes.

Q And is that one of the brochures that you received?

A We received lots of them. I think that could be one of them I received. I'm not sure, but I think it could be.

Q Is that one of the brochures you received at the dinner?

A That I don't know now. I can't recall. It may have, it may not. I don't remember. I had so much stuff there.

Q And from time to time different material has been mailed to you from Rio Rancho, hasn't it?

A Yes.

MS. CROSS: I would like to have this marked.

(Defendant Howard Friedman and Henry Hoffman Exhibit CG marked for identification)

xxx

Q I show you what has been marked Defendant Exhibit CG, and ask you if you recognize that (handing).

A I can't say if I can or I can't, to be honest with you. They had so much stuff sent that I read, after a while I didn't pay too much attention to it.

MS. CROSS: May I have this marked as Defendants Exhibit CH.

(Defendant Howard Friedman and Henry Hoffman Exhibit CH marked for identification)

xxx

Q I show you what has been marked as Defendant Exhibit CH for identification, and ask if that refreshes your recollection as to whether or not you received Exhibit CG.

A I could have received it, but I don't remember it. I read some things that after a while I didn't pay too much attention to it, I let my wife take care of everything there. It could be.

MS. CROSS: I would like to have this marked.

(Defendant Howard Friedman and Henry Hoffman Exhibit CI marked for identification)

Q I show you what has been marked as CI for identification, and ask you if you recognize that.

A Yes, I recognize it.

Q Have you received that?

A I think we have.

Yeah, we received that.

Q And what is that?

A Just on what is going on at Rio Rancho.

Q And did you get one of these every month?

A We did for a while, then for a long while we didn't get anything, and now we just -- I think the last month or so we got them again. But after a long time we didn't get any.

Q Do you recall approximately when you received this one?

A No, I -- I can't recall exactly when we received that.

Probably it's been this past year if it came to this address, because we didn't live there that long.

MS. CROSS: I would like to have admitted CI.

MR. KAUFMAN: Your Honor, may we approach the side bar?

THE COURT: You may.

(At the side bar.)

THE COURT: Yes?

MR. KAUFMAN: We don't object to this to the extent that this is something that the witness received, but we do object to this being offered for the truth of the matters asserted herein.

It would be hearsay. It is not offered against a party opponent so it could not be --

THE COURT: What is it being offered for?

MS. CROSS: This is, among other things, part of the material that he has received.

MR. ARKIN: To show the community of Rio Rancho and to show the community has its own newspaper.

The point is that the government here has attacked the reality of Rio Rancho.

THE COURT: This is not the way to bring it in.

Objection sustained.

(In open court.)

CROSS EXAMINATION (Continued)

BY MS. CROSS:

Q Now, on direct examination you were asked about the initial contract that you had signed for the purchase of property at Rio Rancho, is that correct?

A Pardon me?

Q You were asked about the contract that you had signed for the purchase of property at Rio Rancho, the initial contract.

A Yes.

Q And that you signed at a dinner party, right?

A Yes, ma'am.

Q And before you signed it, did you read it?

A I don't recall if I did or not and I don't know if my wife did or not. She probably did, but I don't know.

Q You don't remember whether or not you read it?

A I left it up to her.

Q This was a contract -- I show you Government Exhibit 158-D -- in which you agreed to pay some $11,545, is that correct?

A That's right.

Q It is a two-page document, is that correct?

A That's right.

Q And you are not sure whether you read this or not?

A My wife read this over, she said it was okay and she wanted to buy the land, I didn't, so I signed it as long as she wanted it.

Q You also said on direct examination that you had thought that your property -- you could exchange any amount of that property for property in the building area, is that correct?

A That's what I thought. That's according to the salesman -- that's what I understood the salesman to tell me.

Q Did you discuss that with your wife?

A No, because we didn't have time to discuss everything. We just listened to the salesman a lot.

Q Did you discuss that with your wife later on?

A Yes, we talked about it later on.

Q And didn't she tell you that that's not what the contract said?

A I don't know if she did or not. She may have, she may not. I don't know.

Q But your testimony is you did not read, then, the back of this contract?

A Pardon me?

Q You yourself did not read this contract?

A No, I didn't, no. She read it and she said it was okay and I left it up to her.

Q You initialed the contract here, I believe?

A Yeah, I initialed it.

Q On the front page?

A Yes.

Q Are those your initials?

A Those are my initials.

Q And that is next to a paragraph which says, "I/we acknowledge receipt of copy of the restrictive covenants and the public report, offering statement or prospectus applicable to the lots."

A That's what it says there.

MS. CROSS: Your Honor, I wuld like to read one sentence from paragraph 3 on the back of this agreement which is in evidence.

THE COURT: Go ahead.

(Ms. Cross read from Plaintiffs' Exhibit 158-D in evidence to the jury.)

Q You did not read that?

A I didn't read that, no.

MS. CROSS: I would like to have this marked.

XXX (Defendants Howard Friedman and Henry Hoffman Exhibit CY marked for identification.)

Q I show you what has been marked as CY, and ask you whether you recognize that (handing).

A I don't recognize it. I wasn't that much involved into it.

Q Isn't that among the papers which you brought this morning to court?

A It could have been. My wife sent a lot of papers. She had a lot of papers there.

Q Did she put that into the envelope?

A Yes, she did.

THE COURT: Let me see counsel at the side bar.

(At the side bar.)

THE COURT: Frankly, I am getting a little fed up with this witness. Why don't you bring the wife in? He doesn't know about anything. He signed it because his wife did it, he brings in what the wife told him to bring in, he didn't read anything.

I don't see how he can be allowed to stand as a witness for the government when the effective cross examination denied is the defendant's for failure to produce the wife.

MR. KAUFMAN: He was the one who had the conversations with people in Albuquerque.

THE COURT: Everything he was shown his wife did. His wife wanted it, he didn't read a darn thing.

MR. KAUFMAN: I don't think his wife would have the myriad of documents sent to him.

THE COURT: That isn't the point. I think she is entitled to be cross examined as to whether she read that contract and what she testifies to what the salesman said to her. She knew that the contract was to the contrary, not this man who didn't look at anything or didn't care.

Take him off the bench.

(In open court.)

THE COURT: You are excused.

The jury is directed to disregard everything you have heard from this witness.

MR. KAUFMAN: Your Honor, can we be heard?

THE COURT: No. You know what to do. Bring the wife in.

MR. KAUFMAN: Your Honor, we will do that, but this is something else --

THE COURT: Then I will worry about reinstating what he said then.

Next witness.

(Witness excused.)

MS. HYNES: The government calls Mrs. Anna Bonavisa.

XXX ANNA BONAVISA, called as a witness by the government, having first been duly sworn, testified as follows:

XXX DIRECT EXAMINATION

BY MS. HYNES:

gtjb 7

Bonavisa - direct

Q Mrs. Bonavisa, where do you live?

A 1480 Thieriot Avenue, Bronx.

Q I am going to ask you to keep your voice up so that all the jurors can hear you.

A Okay.

Q How old are you?

A 58.

Q Are you married?

A Yes.

Q How old is your husband?

A 58.

Q Is he employed?

A Yes.

Q And where is he employed?

A Mutual of New York, an insurance company.

Q What does he do for that company?

A A security guard.

Q Security guard?

A Security guard.

Q How long has he been in that employment?

A 15 and a half hears.

Q Are you employed?

A Yes.

Q And what do you do?

A Medical secretary.

Q And is that for a doctor?

A Yes.

Q Here in the city?

A Yes.

Q And how long have you been so employed?

A 16 years.

Q Is that fulltime or parttime employment?

A Fulltime.

Q Do you have any children?

A Yes.

Q How many children?

A Two.

Q What are their ages?

A The boy is 33, the girl is 29.

Q Do you own any land at Rio Rancho?

A Yes.

Q How much land do you own?

A I own two acres -- no. One acre and commercial property.

Q How did you first learn about Rio Rancho Estates?

A Through a friend of mine. She went to a dinner and she asked me to go along.

Q And did you go to that dinner?

A Yes.

Q Did this friend of yours already own property at Rio Rancho Estates?

A Yes, she did.

Q And she asked you to go to the dinner with her?

A Yes.

Q Where was the dinner held, if you recall?

A At the Lobster Box in City Island.

Q Did your husband go with you?

A No.

Q And was it just you and this friend?

A Me, this friend and her husband, yes, and son -- her son.

Q And when you got to the dinner, were you seated at a table?

A Yes.

Q Were there other people at the table?

A There was just a sales woman there.

Q Do you recall the sales woman's name?

A Yeah, Lynn Gravitz.

Q Did you see any films that evening?

A Yes, I did.

Q Was there a speaker in the front of the room?

A Absolutely.

Q Did you buy any land that night?

A Yes, I bought it, after, you know, a lot of urging.

Q Why did you buy -- what was the reason for purchasing the land that you bought that evening?

A Investment.

Q And what do you recall the speaker said about the investment value of Rio Rancho land?

A Well, she said the land out there is going up and my land will be, if I buy it, my land will be worth a lot of money in a few years and that I'll be making money.

Q Was anything said by the speaker in the front of the room about the growth of Albuquerque?

A Yes, he did.

Q And what did he say?

A Well, he says on one side is the mountains and the other side the federal government owns it and another side something else that it can only go one way, and that's the way to Rio Rancho.

Q Do you recall whether he made any comparisons between an investment in Rio Rancho land and any other type of investment?

A Well, he says you'll get more of an investment there than if you put your money in a bank or any other land.

Q I show you what has been marked Government Exhibit 126-A for identification, and ask you --

A Excuse me, I need my glasses for this.

Q Can you recognize that?

A Yeah.

Q And is your signature on that?

A My signature is on it, yes.

Q And is this the contract for your original purchase of land?

A Right.

MS. HYNES: I offer 126-A.

MR. ARKIN: We have no objection.

XX (Government Exhibit No. 126-A marked for identification received in evidence.)

Q Mrs. Bonavisa, I am showing you Government Exhibit 126-A in evidence, and I will direct your attention to where it says, "Buyer's signature," and there is a Louis A. Bonavisa and Anna A. Bonavisa.

Do you recognize those signatures?

A Well, that's my signature, but my husband wasn't with me at the time.

Q Did you sign your husband's name to that contract?

A Yes.

Q And on the second page of Government Exhibit 126-A in evidence, there are two signatures which says Anna Bonavisa and Louis Bonavisa.

Did you sign your husband's name to that page as well?

A Yes.

MS. HYNES: Your Honor, may I read from Government Exhibit 126-A in evidence?

THE COURT: Yes.

(Ms. Hynes read from Government Exhibit 126-A in evidence to the jury.)

(Continued on next page.)

BY MS. HYNES:

Q Mrs. Bonavisa, I am going to show you Government Exhibit 126-J for identification.

Do you recognize that?

A Yes.

Q What is that?

A That was given to me that night, you know, in this portfolio with a lot of other little papers.

MS. HYNES: The government will offer 126-J.

VOIR DIRE EXAMINATION

BY MR. FLEMING:

Q Mrs. Bonavisa, my name is Peter Fleming.

Did you receive anything inside this cover?

A Well, there was a lot of little articles telling me about the growth of New Mexico and the land of enchantment and all that other stuff.

Q The answer is you did. You don't have those pieces of paper?

A No, no, not with me here.

BY MS. HYNES:

Q Is it your testimony that this was given to you at the first dinner?

A Yes.

Q And it had some material inside of it?

A Yes.

Q When you received it?

A Yes.

MR. FLEMING: I don't object.

(Government Exhibit 126-J received in evidence)

Q Mrs. Bonavisa, I will show you what's been marked Government Exhibit 388 in evidence and ask you if you received a pamphlet like this at the first dinner that you attended?

A Yes.

Q I will show you Government Exhibit 158-F in evidence, which is a map, and ask you if you received that map at the first dinner that you attended.

A Yes, I did receive that, yes.

Q The contract that you signed the first night that you purchased land, Mrs. Bonavisa, and I am referring to 1260A in evidence, there is a paragraph which states:

"Acknowledge receipt of a property report filed with the Office of Interstate Land Sales Registration, United States Department of Housing and Urban Development and any applicable public report, offering statement or prospectus required by state authorities."

Is that your initial next to that paragraph?

A That is mine and I initialed my husband's also.

Q Did you receive any property reports that evening?

A I don't recall receiving anything, no.

Q Mrs. Bonavisa, I am going to show you what has been marked as Government Exhibit 126-M for identification.

Let me first ask you: Did you turn over to the United States Attorney's Office material that you had received at various dinners?

A Yes.

Q I will show you Government Exhibit 126-M, which is an offering statement, dated December 5,1969, and ask you if that refreshes your recollection as to whether you received an offering statement at the time you purchased the property.

A N. at the time I purchased the property. After I purchased the property I received that.

THE COURT: When?

Q When did you receive a property report?

A I must have gotten that through the mail after I gave them the money.

Q Do you recall whether you received the property report at the dinner?

A No, I don't recall whether I received it at the dinner. I don't think I did.

Q In any event, you did receive a property report after you signed the contract?

A Yes.

Q Did there come a time when you went to a second sales dinner for Rio Rancho?

A Yes, I did.

Q How did you come to go to that second dinner?

A I was sent an invitation by my sales girl.

Q I am sorry, I didn't hear you.

A By the sales girl.

Q Mrs. Gravitz?

A Right.

Q Did your husband go with you to that sales dinner?

A Yes, he came with me at that time.

Q Did you buy any property at that dinner?

A At that dinner he bought the commercial property.

Q I want you to keep your voice up, Mrs. Bonavisa.

At the second dinner that you attended was there a film shown?

A Yes.

Q Was there a presentation by an speaker in the front of the room?

A Yes.

Q How did that presentation compare to the presentation you heard when you first bought the property?

A Well, it was almost the same. The only thing is they said that it is growing now and your land is worth more money now than when you bought it.

Q Let me show you what has been marked Government Exhibit 126-B for identification. I ask if you can identify this?

A Yes.

Q Is this a contract for the purchase of property at the second dinner that you attended?

A Right.

Q Does your signature appear on this?

A Yes.

Q Does your husband's signature appear on this?

A Yes.

MS. HYNES: I offer 126-B.

(Government Xxhibit 126-B received in evidence)

MS. HYNES: Your Honor, may I read from a portion of this?

THE COURT: Yes.

(Ms. Hynes read from Government Exhibit 126-B in evidence to the jury)

Q Mrs. Bonavisa, the second piece of property that you bought in Unit 7, was that a commercial piece of property?

A Yes.

Q Did you buy that piece of property at the second dinner that you attended?

A Right.

Q Was your sales person again Mrs. Gravitz?

A Yes.

Q What, if anything, was said to you about the purchase of that commercial lot?

A Well, I cannot recall exactly, but she said it was a good piece of property and that it would double its value in a short time and that when they decided to develop the area, that somebody could come along and maybe lease it for either a gasoline station or whatever because it was a corner property.

Q What was your reason for buying the piece of commercial property?

A Investment.

Q Did therecome a time when you went to visit Rio Rancho?

A Oh, yes.

Q When did you first visit Rio Rancho?

A Around August of 1970.

Q Was this after you bought your acre and your commercial lot?

A Yes.

Q When you visited Rio Rancho in the summer of 1970, did you go on a company tour?

A No, we drove out.

Q What happened after you got to Rio Rancho?

A Well, we went into what they called at the time the Panorama Inn and we registered there and then we joined their local tour, you know, with the bus.

Then we visited the Rio Rancho office and they took us to the property.

Q Am I correct, then, that you drove to Rio Rancho on your own?

A Yes.

Q And when you got to Rio Rancho you then joined a tour that was in process?

A Yes.

Q Did there come a time when you were taken to see your property?

A Yes.

Q Can you tell us what happened then?

A Well, we went to the office and they assigned a gentleman to us and he took us in his car over this rough country roads.

Q How long did it take you from the time you left the sales office where you met this gentleman to the time that you arrived at your property?

A Well, I didn't clock it, but it looked like an awful long time.

Q You had purchased two pieces of property, is that correct? You have a piece in Unit 7 and you had two lots in Unit 23, is that correct?

A Right.

Q Now, when you testified that you thought it took a long time, was that to Unit 23?

A 23, yes.

Q What happened when you got to Unit 23?

A Well, after we got there I looked at the land and I didn't say anything. I saw a cow grazing on it. I just made a remark and said, who has their cow grazing on my land, I should charge them for it.

They said that the land was bought from a

Mr. King and that he had the rights to keep his cattle on that land.

Q Did the salesman take you to any other property at that time?

A They took me to the commercial property.

Q What happened when you got to the commercial property?

A Well, he showed it to me and that is it.

Q When you arrived at the property that you had purchased in Unit 23, were you able to see the developed area from that property?

A No.

Q When you were at your property that you purchased in Unit 7, were you able to see the developed area from Unit 7?

A A little, not much at the time. Yes, a little.

Q Was anything said to you by the salesman at that time about development of the property that you had purchased?

A Well, they said in about seven years it should be developed.

Q When you were at the property in 1970, did you sign a form that said that you were satisfied with your property?

A Yes, I did.

Q Did there come a time when you went to Albuquerque again?

A 1972, I think it was.

Q When youwent to Albuquerque in 1972, did you take a company tour at that time, I mean go on the plane with the company tour.

A No.

Q How did you go to Albuquerque that time?

A We drove out again.

Q Where did you stay when you got to Albuquerque?

A The same place, Panorama Inn.

Q The second time when you went out in 1972 did you join a company tour at that time?

A No, I didn't at that time, no.

Q Were you taken to see your property in Unit 23 in 1972?

A Yes.

Q Was there anything different about it?

A No, the same thing.

Q At the time that you visited the property --

THE COURT: Was the cow still there?

THE WITNESS: No, it wasn't there, Judge.

Q At the time that you visited your property in 1972, you had been there in 1970 and you went back in 1972?

A Yes.

Q Did you visit the developed portion of Rio Rancho Estates?

A Yes.

Q Were there more houses the second time you went in 1972 than the first time in 1970?

A Yes, there were a few more, but that was all, everything was done close to Panorama Inn.

Q And that was where you were staying?

A Yes.

Q Did you exchange your property at that time that you visited in 1972, exchange any of your property I should say?

A Yes, I exchanged one lot.

Q Can you tell us what lot you exchanged?

A I think I exchanged Lot 6 for a piece in Unit 20.

Q That was Lot 6 in Unit 23?

A Yes.

Q You exchanged that for a piece of property in Unit 20?

A 20.

ojw 12 Bonavisa - direct

Q What was the reason for exchanging one lot in Unit 23 for a lot in Unit 20?

A Because the salesman, when I went there, he says that that unit was being built right near a new highway was coming in.

end t3a

Q What unit are you referring to?

A Unit 20. A new highway was coming that way and that would be close to a highway and it would be closer, you know, for your family to come and visit you if you ever moved down here.

So, I figured being closer to a highway would be better.

Q In 1972, had you decided or considered relocating to Rio Rancho?

A Not yet. We were undecided yet at that time.

Q You were at least considering it?

A Considering it, yes.

Q Was that your reason for transferring one lot into the unit 20 area?

A Yes.

Q The lot that you transferred -- the lot that you purchased in unit 20, was that a more expensive lot than the lot in unit 23?

A That's what they said, yes.

Q Did you end up paying more money for that lot?

A Yes.

Q How much more money do you recall you paid for the lot in unit 20?

A $800.

Q Let me show you what has been marked Government Exhibit 126-E for identification and ask you if you can recognize that.

A Yes, I do.

Q Does your signature appear on that?

A Yes, it does.

Q Is this the property exchange agreement?

A That's right.

MS. HYNES: I offer Government Exhibit 126-E.

VOIR DIRE EXAMINATION

BY MR. ARKIN:

Q Mrs. Bonavisa, with respect to 126-E, which the government is offering, is this your signature on the document?

A Yes.

Q Is this your husband's signature?

A Yes, that's his.

Q That's his signature there?

A Yes, that's his. It looks like it. Yes, that's his.

MR. ARKIN: We have no objection then.

XXX (Government Exhibit 126-E received in evidence.)

MS. HYNES: May I read from a portion of this, your Honor?

THE COURT: Yes.

(Ms. Hynes read from Government Exhibit 126-E in evidence to the jury.)

DIRECT EXAMINATION (Continued)

BY MS. HYNES:

Q Mrs. Bonavisa, the lot that you were trading in in unit 23, you were given a credit of $2,095, is that correct?

A Yes.

Q And the lot that you were purchasing in unit 20 had a purchase price of $2,900 and you paid the difference?

A Right.

Q Did there come a time when you tried to list your property with brokers in Albuquerque?

A Yes.

Q Approximately when was that? Was that after you returned in 1972?

A Yes.

Q What did you do?

A I wrote to some people to ask them for the names of brokers down there and see if they can list it.

Q Was your land at Rio Rancho ever listed with a local broker?

A No.

Q What was the reason?

A Because they said that anybody who wants to buy land wants a development date and the broker couldn't give them a development date.

Q When you purchased this land in 1970, what if anything was said to you about your being able to resell it?

A They didn't say that it couldn't be sold. They said that when you sell it, you will sell it at a good profit.

Q Did there come a time when you visited Rio Rancho again in 1974?

A Yes, 1974.

Q How did you travel to Rio Rancho on that occasion?

A The same way, by car.

Q Where did you stay?

A At the Panorama Inn.

Q Did you visit your property in 1974?

A Yes.

Q Did you visit the piece of land that you had bought in unit 20, did you visit that in 1974?

A Yes.

Q Did you visit the piece of property that you still owned in unit 23?

A No, I didn't visit that piece.

Q The piece of property that you purchased in unit 20, you had originally seen that in 1972, I take it?

A Right.

Q And when you saw it in 1974, was it any different?

A No.

Q When you visited Rio Rancho in 1974, the last time you had been down there was 1972, is that correct?

A Right.

Q When you got there in 1974, were there additional homes built?

A Not that I could recall.

Q Where was the developed area as you recall?

A It was all near the Panorama Inn. You could walk from there.

Q When you visited Rio Rancho in 1974, did you make any decision about relocating?

A We were thinking about relocating there then.

Q You visited Albuquerque another time after 1974, is that correct?

A We went down this year.

Q In 1976?

A '76.

Q When this year did you go down?

A What?

Q When?

A The end of July.

Q Did you go to Rio Rancho?

A I stayed at the Panorama Inn, but I didn't visit my property because I was a little discouraged.

Q Did you visit it on this last trip down to Albuquerque? Did you visit any other areas in Albuquerque?

A We visited northeast Albuquerque.

Q What was the reason for visiting northeast Albuquerque?

A I wanted to see what priced homes they were building there in comparison to Rio Rancho.

Q Did you do that?

A Yes.

Q What did you find?

A There was a big difference in price.

Q Did you look at any particular homes in the northeast section?

A Yes, I looked -- well, I looked at all their model homes.

Q You said there was a difference in price between the homes in northeast Albuquerque and the homes in Rio

Rancho. Was that difference higher -- were the houses in northeast Albuquerque priced higher or lower than the houses at Rio Rancho?

A Lower.

Q Were you ever invited to the offices of ATC Realty?

A On 61st Street?

Q Yes.

A Yes.

Q Are you familiar with the term VIP program?

A Right.

Q Were you invited to the offices of ATC in connection with the VIP program?

A Yes.

Q Can you tell us what happened? First of all, tell us approximately when, what is your best recollection of when you went to this office.

A Probably in 1973, something like that.

Q Can you tell us what happened?

A Well, we went down to the offices and they had a table laid out with sandwiches and drinks.

Q Let me first ask you how you got invited to that, if you recall.

A Through invitation. Then they called my husband

and I into a room and they wanted to sell us some more property. I refused.

Q Who called you into the room? Who was in the room?

A There was Lynn Gravitz and Leonard Geller.

Q Was anyone else in the room beside yourselves?

A No, just the four of us.

Q Your husband was there?

A Yes, my husband and I.

Q What did Mr. Leonard Geller and Lynn Gravitz say to you?

A They said they had this piece of property that was very valuable and that they were offering it only to us. I said I refused. I said, I didn't want to buy it.

He was sort of getting very obnoxious about it because we were refusing to buy it.

Finally, when he left the room, he said, I will leave you in here to decide upon it. The two of them left and then came back and said, have you decided?

And I said, it's still no.

He said, why?

And he started to get very angry at us. I said, I am not buying any more property and that's it.

After a few words were exchanged, he left us again for the second time to decide and I turned to my husband and I said, don't let it frighten you because I am not buying any more land in that place.

When they came back he said, have you decided?

And I said, yes, it's still no and that's it.

He turned to my husband and my husband said, no, we are not buying any property. He got very aggravated so my husband and I got up and walked out.

Q So you did not buy any more property?

A No.

Q At the time when you first visited Rio Rancho Estates and you were taken to see your property, you were taken in a company car, is that correct?

A Yes.

Q Was there a radio in the car?

A Yes.

Q Do you recall what, if anything, was coming over the radio?

A Well, it was sort of like a CB radio, you would say. He was in contact with all the other sales agents and they were saying, I am just stating facts, unit so and so has been sold and unit so and so is still available and that's what was going on.

Q What did you believe was happening when you heard that coming over the radio?

MR. FLEMING: Objection.

A I believed that a lot of people were buying land.

THE COURT: Overruled.

A I believed a lot of people were buying land and I felt I was in on something.

Q Mrs. Bonavisa, I am going to show you what has been marked as Government Exhibit 126-G and ask you if you can identify that.

A Yes.

Q Does your handwriting appear -- is this your handwriting?

A This is mine, yes.

MS. HYNES: I offer 126-G.

MR. ARKIN: No objection.

XXX (Government Exhibit 126-G received in evidence.)

Q Mrs. Bonavisa, I will show you the last page of 126-G in evidence. It is an envelope to the Chemical Bank. Is that where you made your payments on Rio Rancho land?

A Yes.

MS. HYNES: May I read from a portion of this, your Honor?

THE COURT: Yes.

(Ms. Hynes read from Government Exhibit 126-G in evidence to the jury.)

Q Mrs. Bonavisa, approximately how much have you paid -- are you paid in full on all of your property?

A I am paid in full.

Q How much have you paid for all of your property?

A $10,000, over.

Q Have you been able to sell your property?

A No.

MS. HYNES: I have no further questions, your Honor.

THE COURT: We will have a short recess.

(Recess.)

(Continued on next page.)

(In open court - jury present)

THE COURT: You may proceed.

CROSS EXAMINATION

BY MR. FLEMING:

XXXX

Q Mrs. Bonavisa, Government Exhibit 126-A is your purchase contract of March 18, 1970 (handing).

A Right.

Q Am I correct that was your first purchase?

A Right.

Q Government Exhibit 126-M is a property report which was shown to you by Ms. Hynes?

THE COURT: That is for identification, isn't it, 126-M?

THE WITNESS: Yes.

MR. FLEMING: M.

THE COURT: It is not in evidence.

MR. FLEMING: It is not marked either way, if your Honor please. I just don't know.

THE COURT: I am sorry.

Q Did you testify that you did receive that property report at sometime in any event?

A At sometime, yes. I don't recall when, but it was --

MR. FLEMING: I would offer it.

A Can I say something?

Q Sure.

A It was after I signed contracts and everything.

Q I understand that.

MR. FLEMING: May I offer it, your Honor?

MS. HYNES: No objection.

(Defendant Chester Carity and Daniel Friedman Exhibit CK received in evidence)

Q Is it your testimony that you received this offering statement -- is your testimony to your best recollection you received this offering statement in the mail after you purchased the first piece of property?

A Well, to my best recollection, I received it in the mail, but I can't recall when. But I know it was after I signed contracts. I didn't get this before.

Q When you received it, did you read it?

A Well, I looked through it. I looked through it and I read the parts that I thought were important to me.

Q Did you receive it before you purchased your second piece of property on June 20, 1970, as evidenced by 126-B in evidence?

A I can't recall. I can't say one way or the other.

Q That would be a two month period of time?

A Time, yes.

Q Do you have any recollection whether you received this report between the two purchases?

A I have no recollection of when I received it.

Q I am reading from the offering statement CK, paragraph 5, "Lots may also be purchased for speculative purposes, but such purchases are advised that resale for a profit may be difficult for a number of years in view of the fact that water and utilities may not be available to certain lots for an indefinite number of years."

When you read the property report, whenever it was, did you read that?

A I read that, but they didn't tell me that.

MR. FLEMING: Could I strike the last part of the answer?

THE COURT: Strike the last part.

You are being asked, did you read it?

THE WITNESS: I suppose I did.

Q So your first purchase was on March 18, 1970 and your second purchase was on June 20, 1970, is that correct?

A That's correct.

Q And that second purchase was at a dinner?

A Yes.

Q Although it speaks for itself, that is almost precisely two months after your first purchase?

A Right.

Q Did you testify that at the second dinner on June 20th, when you made your second purchase, someone told you that the land you had purchased two months before on March 18th was worth more than when you bought it?

A Yes.

Q Did it surprise you that you had made money on your investment in two months?

A It did.

Q Did you testify in attempting to resell land at Rio Rancho you contacted people at Rio Rancho?

A Some people, yes.

Q Were those people that you contacted, in fact, not friends of yours?

A Well, they became friends when I went down there. They weren't friends of mine in the City here.

Q Let me see.

You went down to Rio Rancho four times, is that right?

A Right.

Q First in August of 1970?

A Right.

Q Then I believe in 1972?

A Right.

Q Again in 1974?

A Right.

Q And again in 1976?

A Right.

Q Did you make those friends at Rio Rancho on your first trip in August of 1970 ?

A No.

Q Did you make these friends in Rio Rancho on your second trip in 1972?

A Yes, I think so.

Q Now, all of these trips you made by car, is that correct?

A Right.

Q You just went down in 1976.

What kind of a car do you own presently?

A An Oldsmobile.

Q An Oldsmobile?

A Yes.

Q What year?

A 1972.

Q And what car did you own before that?

A A Pontiac, I think.

Q How much did it cost you to make these --
I will withdraw that.

I take it you drove to Albuquerque from New York and then back to New York on each of these four occasions.

A Yes.

Q Did you go beyond Albuquerque on any of these trips?

A Yes. On one trip we went as far as Las Vegas.

Q Did you do any gambling in Las Vegas?

A I didn't.

Q Did your husban?d

A Yeah.

Q How much did it cost you in 1970 to drive to Albuquerque and then back to New York?

A I can't recall, because I didn't take care of the financial affairs, my husband does that.

Q How many days did it take you to reach Albuquerque?

A I think three days.

Q Three days?

A Yes.

Q And three days coming back?

A Yes.

Q And I take it you stayed overnight at various motels or hotels on the way?

A Right.

Q Of course, you had food expenses.

A Right.

Q How long did the trip take in 1972?

A Well, the same, the same. We managed to make it in three days.

Q So the same in 1974, about three days or six days round-trip?

A Right, right.

Q And in 1976?

A Three days.

Q How long did you stay in Rio Rancho on the first trip in 1970?

A I think it was five to seven days.

Q You stayed at the Panorama Inn?

A Right, yes.

Q Did the company, that is, Rio Rancho, pay for that?

A No.

Q How long did you stay in Rio Rancho in 1972 -- I am sorry, in Albuquerque in 1972?

A A week, one week.

Q Did you, again, sty at the Panorama Inn?

A Right.

Q And in 1974, how long did you stay at Rio Rancho?

A About the same time.

Q Again at the Panorama Inn?

A Always at the Panorama Inn.

Q Did you like the Panorama Inn?

A It was cheaper.

Q Did you like it for any other reason?

A Well, it's nice. It's a nice hotel, motel, whatever you want to call it.

Q Is it fair to say that your four trips to Albuquerque cost you in the neighborhood of $10,000?

MS. HYNES: Objection, your Honor.

THE COURT: Overruled.

A Four trips cost me $10,000?

Q You took four trips, six days round trip on the road and a week or approximately a week in Albuquerque, is that correct?

A Yes.

Q Each trip was about two weeks?

A That's right.

Q And you had to pay for food and lodging for that two week period of time, gasoline and other expenses?

A Right.

Q How much did you estimate each one of those trips cost you?

A The most, $1,000.

B.P M

Q How did you come to make these friendsin 1972?

A We were driving up and down the developed areas and we were going very slow looking at the houses, and this couple was outside and they noticed a New York license and they stopped us, they wanted to know where we came from, and so they asked us to get out, and we did, and asked us in and we went inside and we were talking and we corresponded from then on.

Q You became friends?

A Yes.

Q They enjoyed Rio Rancho?

A They said they liked it, yes.

Q Did they tell you how long they had been there?

A Well, when I first met them, it was only a year.

Q Did they tell you that they had purchased a lot at a dinner in New York City?

A Yeah.

Q Did they tell you that the lot they had purchased had been undeveloped land like yours?

A Yes.

Q And that they had exercised their exchange right and built a house in a developed area?

A Corrales Heights.

Q And they were enjoying themselves?

A That's what they said.

Q You didn't have any reason to doubt them, did you?

A No.

Q Was the weather in Albuquerque what you had been led to believe it would be?

A Yes, it is.

Q It is fair to say, is it not, that you liked Albuquerque and the neighbors around it?

A I liked New Mexico.

Q As a matter of fact, you apparently are still considering moving there?

A Not as strongly as I was before.

Q Not as strongly?

A No.

Q Is that in part because of reading about the indictment in this case?

A No. It was partly because the homes were going up too high.

Q Becoming too expensive?

A That's right.

Q Do you wish you had purchased a home back when they were less expensive?

A Well, they were much less expensive, but at that time I wasn't considering living down there.

Q At any event, the prices of the homes are increasing in the area?

A Right.

Q So the value of the homes in Albuquerque are rising, is that right?

A I suppose so.

Q Unfortunately, you feel now that has become too expensive for you to make your move?

A Right.

Q During your four trips, 1970, 1972, 1974 and 1976, as you crossed this country, did you notice the development of this country, the building of houses and roads?

MS. HYNES: I object, your Honor.

THE COURT: Sustained.

Q When you went to Albuquerque, that is, between 1970 and 1976, did you notice any growth of Albuquerque towards Rio Rancho?

A No.

Q Did you notice any new shopping centers between Albuquerque and Rio Rancho?

A I saw a shopping center in Rio Rancho.

Q Did you see a big shopping center between

Albuquerque and Rio Rancho?

A I don't recall.

Q Did you see a new high school just below Rio Rancho and between Rio Rancho and Albuquerque?

A Yes, that I did.

Q Did you see new housing between Albuquerque and Rio Rancho?

A Do you mean Rio Rancho itself or in Albuquerque?

Q No. Between Albuquerque and Rio Rancho.

A I can't recall that.

Q Was the road that runs from Albuquerque to Rio Rancho, in fact, widened and made larger since 1970?

A Yes, I think so.

Q More traffic on it?

A Yes.

Q You testified about -- I missed the name -- you testified about someone who had some kind of an affair at ATC at New York had tried to sell you some more property?

A Yes.

Q And apparently had raised his voice or something of that sort?

A Right.

Q Was that Leonard Geller?

A Yes.

Q He actually shouted at you?

A Yes. He shouted, "Why don't you want to buy this, why?"

I said, "Because I have enough land."

Q He didn't overcome your will when he shouted at you?

A No.

Q You didn't buy any more land?

A No, sir.

Q You testified you have tried to sell your land, but you have been unable to do so, is that correct?

A Right.

Q Am I correct that as a matter of fact, you had arranged to sell a piece of your residential property to a friend?

A Right.

Q And the day that the friend came with the check to buy a piece of your property from you, this indictment appeared, was announced in the newspapers?

A Right.

Q And he, therefore, took back his check?

A Right.

Q How much was he going to pay you for your land?

A Gee, I have no recollectionof that, but it was going to be less than what Rio Rancho said it was worth at the time.

Q Was it going to be more than you had paid for it?

A It was more than what I was going to pay for -- what I paid for it, yes.

Q How big a piece of land was it?

A A half acre.

Q A half acre.

Now, was it going to be 50 per cent more than you had paid for it?

A About that, I think. That my husband handled. I don't handle that, and that's the truth.

Q One other question:

I want to show you Defendant's Exhibit BW (handing).

Have you ever seen this, a map like this?

A Yes.

Q I want to direct your attention to unit 20 (indicating).

A Yes.

Q Is that the unit -- where was your property that you exchanged for property in unit 20?

A Here (indicating).

Q 23, is that right?

A Yes.

Q And you exchanged into unit 20, is that right?

A Right.

Q And did you testify that the salesman said that they were going to build a road or enlarge a road which would make it easier for people to visit you?

A The main highway was going to be there.

Q And am I correct that there was at that time a highway adjacent to unit 20, Route 44?

A I don't know. I guess so.

I don't know. I can't say yes or no on that question.

Q When he said that -- I am sorry.

A Because when he said they were going to build a road that would be adjacent with the main highway, that's all I heard.

Q You didn't ask him where?

A Well, he showed me. Right down there, he said.

Q When he showed you that, was there a road down there when he pointed?

A Yes, there was sort of a road down there, yes.

Q And this was back in what year?

A Let me see. When did I do the exchange now?

1972.

Q I don't know. Was it 1972?

A I can't --

Q I don't know, but Ms. Hynes says it was 1972 by a review of the records.

Would that be correct?

A 1972, yes, because one year we went alone, the other years we went with people.

(Continued on next page.)

Q Now, when you went back in '74 and '76, did you go to Unit 20 and see whether that road, in fact, had been put in?

A In '76 I didn't visit the property. I just didn't visit any part of it.

Q You stayed at Panorama Inn?

A I just stayed there for a few days, that is all.

Q Did you take time in 1976 when you were at Panorama Inn ot drive up Route 528 and see if Route 44 had been enlarged?

A No, I didn't because I didn't see too many homes being built at the time and I was just a little discouraged. I thought I was going to see it built more when I went down there this year.

Q The answer is you did not take the time to do that?

A No, I didn't go. As I said, I was discouraged with the whole thing.

Q In 1974 did you go up there and see if the highway had been enlarged two years after they said it was going to be enlarged?

A I think I must have saw it, yes.

Q Was it enlarged?

A I didn't see any difference.

Q You are not sure?

A No.

Q When your husband or yourself made the agreement to sell your half acre for a profit over what you had paid for it, did you advise the purchaser of his exchange right, that is, that he could trade his land into a building area?

A You mean when we were going to sell that half acre to this fellow?

Q Yes.

A Yes.

Q You told him --

A But he had to pay more money.

Q He could move down there and exchange in and build a house?

A Yes, but I made it understood that he also had to give more money.

Q You got, as you believe, a price which was about fifty percent above what you had paid for it?

A I think so.

Q That is between 1969 and 1975?

A Yes.

Q Do you own any stocks, common stocks?

A I own some stocks in Canada.

Q You own some Canadian stocks ?

A Yes, that my boss gave me.

Q Have you made fifty percent on those stocks?

A No.

Q Did you pay for those stocks?

A No, I didn't.

Q He just gave them to you?

A Yes.

Q Has the price gone down?

A I guess so.

Q Maybe down to a penny, a penny a share?

A No, not that far down.

Q Thirty cents a share -- well, never mind.

MR. FLEMING: Thank you very much.

I have nothing further, your Honor.

THE COURT: Anybody else?

CROSS EXAMINATION

BY MR. ARKIN:

Q Mrs. Bonavisa, did you say between 1970 and '72 the second time that you visited Rio Rancho that you did not perceive any more development down there?

A 1972, I saw development down there in '72.

Q From 1970?

A Yes.

Q What was the development you saw from 1970 to 1972?

A Well, close by Panorama Inn, all that area across the road there, it was developed. What do they call that, Corrales Heights.

Q Did you see between 1970 and 1972 the new shopping center?

A Yes.

Q That wasn't there in 1970, was it?

A No.

Q With sixteen separate stores, did you see that in '72?

A Yes, you mean the supermarket and the drug store and all that, is that what you mean?

Q Is that what you saw?

A That is what I saw.

Q Did you have any idea how many homes were built between 1970 and 1972?

A Was it 600.

Q Do you know that in 1970 there were 728 homes, did you know that?

A In 1970, no.

Q And that in 1972 there were over 1200?

A No.

MS. HYNES: Your Honor, I object. There is no foundation.

THE COURT: The witness said on direct in response to your question that there was very little development.

He is now trying to find out what she meant by little.

She said about 600 homes were built and a shopping center put up. It is up to the jury to determine whether that is a little or a lot.

Q Mrs. Bonavisa, did you see the National Secretary's Association Building, the Retirement Center when you were there in 1970?

A No.

Q You did see it in 1972,though, didn't you?

A I don't recall when I saw it, but I saw it.

Q Sometime between 1970 and 1974, am I correct?

A Yes.

Q Did you see the mobile home mark when you were down there in 1970?

A No.

Q You saw it in 1972, didn't you?

A I don't recall if I saw it in '72.

Q But you saw it somewhat later?

A Later.

Q Did you see the 180 condominium units in 1970?

A No.

Q You saw it somewhat later though, didn't you?

A I didn't see 180.

Q Did you see the condominium units?

A I saw some.

Q About how many did you see?

A Just one block, three or four.

Q Did you know that the population of Rio Rancho doubled between 1970 and 1972 from 2,000 persons to 4,000 persons?

A No, I didn't know that.

Q Do you know that two new churches were built in those two years?

A I know of one.

Q You went down this year to Rio Rancho, did you see any development between this year and say 1972?

A No, I didn't.

Q Do you know that there were now close to 1800 homes at Rio Rancho?

A I didn't see too much development.

Q Would you consider 600 new homes in three years to be development?

A Well, yes, it is some development. but I am not concerned about what's developed in these areas. I am concerned with development where I could move if I feel like moving.

Q You did know, didn't you, that with respect to your residential lot that you could exchange into a developed area?

A Yes, if I give them more money, sure.

THE COURT: When you bought this property, did you think you could go down the next day and build a house on it?

THE WITNESS: No, not the next day, Judge, no.

THE COURT: You knew you were buying undeveloped land without any utilities, right?

THE WITNESS: Yes, but I thought it would be developed.

THE COURT: Wait a second. You knew that when you bought it that if you wanted to move down there the next day you had to exchange it for a lot in the developed area?

THE WITNESS: Yes.

THE COURT: You knew that, too?

THE WITNESS: Yes, because the brochure said of comparable value.

THE COURT: Wait a second.

Q When you were down there last in 1976 this year, did you see the new office plaza?

A I didn't hear that.

Q When you were down there this year, this last summer, did you see the new office building development, the office plaza?

A No, I didn't see that truthfully I didn't.

Q Did you see the Felician Sisters Building?

A That I saw, yes.

Q You didn't see that in 1974, did you?

A I think they were just starting that, weren't they?

Q They didn't start it in 1970 or '72, they started it when? A year and a half or two years ago.

A I don't know when they started it.

THE COURT: He is asking you.

A I don't know when they started it.

MR. ARKIN: Your Honor, I will be sworn.

THE COURT: She didn't see it in '70 or '72.

Q When you were down there in Rio Rancho in about 1972 you went out to your property in Unit 7, didn't you?

A Yes.

Q From your property in Unit 7 you could see the developed area of Rio Rancho, am I correct?

A Could I please say something at this point?

Q I wish you would answer my questions.

A Yes. I made an error. I could see from Unit 20, not 7. I am sorry, but I made a mistake earlier.

Q But you could see the developed area from Unit 20?

A In the far off distance. yes. Excuse me, Unit 20 is up on a hill.

Q From that hill, could you also see Albuquerque?

A No, I don't think I can see all Albuquerque.

Q Did you own property in Unit 7?

A Yes.

Q Do you know that in Unit 7 at the present time there are homes?

A They didn't tell me there were homes when I was down there they said that there was only one home. I don't own residential property in Unit 7.

Q That is not my question. Did you know that there were homes in Unit 7?

A No, I didn't.

Q When you were there in 1976 did you look at Unit 7?

A I called the office and asked them what was doing.

Q Did you look at Unit 7?

A No, I didn't go and look at it.

Q You were at the Panorama Inn at Rio Rancho but you didn't go to Unit 7?

A No, because I was discouraged.

Q Your answer is no you didn't go there?

A No, I didn't.

Q Do you know there were utilities in place in Unit 7?

A No.

Q You said that you bought your property originally for investment, am I correct in that?

A Right.

Q You visited Rio Rancho first in 1970, is that so?

A Right.

Q And then again in 1972.

A Right.

Q And in 1972 at that point you were considering relocating to New Mexico?

A Well, not definitely.

Q But you had that in mind, didn't you?

A I had it in mind.

Q Then in 1972 after two trips to New Mexico when you visited Rio Rancho again, you again had in mind the possibility of moving to New Mexico, am I right in that?

A To New Mexico, yes.

Q And to Rio Rancho?

A Well, I was getting a little discouraged at that point.

Q But you were considering Rio Rancho, were you not?

A Yes.

Q You said that when you were in Albuquerque or the New Mexico area in 1974 that you looked in Northeast Heights for homes, is that so?

A I knew somebody that lived there. A friend of mine knew somebody and I went to see her home.

Q That friend of yours whom you are talking about, was that a Rio Rancho resident?

A No.

Q Somebody else?

A Yes.

Q By the way, what is the name of your friend at Rio Rancho?

A Diana.

Q Is that her last name or first name?

A Last name.

Q D-i-a-n-a?

A Yes.

Q You say you looked at Northeast Heights for homes?

A Yes.

Q What part of Northeast Heights did you look in for homes?

A I cannot recall, but somebody told us they were building homes in Northeast Albuquerque and we just went there and looked at the homes.

Q Do you know where in Northeast?

A No.

Q Was that a development you were looking at?

A Yes.

Q What was the name of the development?

A That I cannot recall.

Q Do you recall how much the homes were selling for?

A The home that interested me was $33,000.

Q On what size plot of land was that home?

A I cannot recall.

Q Do you recall how many rooms the home had?

A It was a three-bedroom house. Split up and down, whatever you want to call it.

Q Did you look at homes at Rio Rancho?

A Those townhouses and patio homes that they had.

Q Did you look at split level single homes at Rio Rancho?

A What's the difference between a split level and a townhouse?

Q I am not sworn, Mrs. Bonavisa.

THE COURT: The witness doesn't understand what you mean by split level.

A Because the models --

MR. ARKIN: That was a word the witness used. I will rephrase the question, if your Honor please.

Q Did you look at any single family homes at Rio Rancho?

A Yes.

Q Do you recall what the prices were for a three bedroom single family homes at Rio Rancho?

A The single family homes I looked at they were called either patio homes or townhouses and they ranged from 42,000 up.

Q Did you know that in 1976, as of June 1, 1976, there were three bedroom homes at Rio Rancho for $34,000 and $33,000?

A They told me they didn't have any models when I called the office.

Q Did you go look at the various models?

A The patio homes and the townhouses, yes.

Q You didn't look at single family homes, then?

A No, because they said those were the only models that they had.

Q When you were at Rio Rancho, did you take the trouble to drive around through Corrales Heights?

A No, I just went to visit this friend in Corrales Heights.

Q You didn't drive around there?

A No.

Q Did you receive any brochures or floor plans from Rio Rancho when you were there the last time for homes?

A Of the patio homes and the townhouses, yes.

Q They wouldn't give you any other floor plans or home plans?

A I received after, when I got home then I received brochures of one family homes of $29,000 they said.

Q That is somewhat less than the $33,000 homes in the Northeast, isn't it?

A But there was no comparison, though.

Q Didn't you say before when you were testifying on direct examination that the homes in the Northeast were less expensive than the homes at Rio Rancho?

A Yes.

Q But then you received information --

A Why didn't they tell me when I was there.

Q Please, ma'am, I am asking questions.

But then you received information -- before you testified here today --

A Yes.

Q That there were homes being sold at Rio Rancho for less than you saw homes in the Northeast being sold for, am I correct in that?

A I testified earlier that the homes were less at Rio Rancho? No.

THE COURT: You said that the homes in the

Northeast were less expensive than the ones in Rio Rancho?

THE WITNESS: Right.

Q Yet you knew when you said that that there were homes at Rio Rancho selling for $29,000, isn't that so?

A They sent me the brochure after, yes.

Q But before you testified here today, did you discuss with Ms. Hynes before you testified here today your testimony?

A No, I didn't discuss that with her.

Q You didn't mention to Ms. Hynes anything about looking for a home in Northeast Heights?

A Yes, I did.

Q Did you tell her that if she asked you the question that you would say that the homes in northeast heights were selling for more money than the homes at Rio Rancho?

A Yes.

Q Did you mention the $29,000 brochure to her?

A I was -- no, I didn't.

Q Do you know that the patio and townhouses which you say you looked at were built on or near the golf course?

A Yes.

Q Don't you consider homes built on or near a golf course to be more valuable or more expensive than homes which are not?

A Yes, I do.

Could I say something? Judge, could I say something?

No, I can't, okay.

MR. ARKIN: I have nothing else.

XX REDIRECT EXAMINATION

BY MS. HYNES:

Q Mrs. Bonavisa, you just -- Mr. Arkin was questioning you about patio homes being on the golf course. You said you wanted to say something. What is it?

A I wanted to say that when I looked at the models and they were being built on the golf course, I wasn't going to build that house on the golf course. I wanted to build it on my property that I bought.

Q The property you bought in unit 20?

A Unit 20.

Q When Mr. Arkin mentioned the brochure that you received in the mail that mentioned a price of $29,000 for a house at Rio Rancho, did you ever see that house at Rio Rancho?

A No.

Q Was there such a house constructed at Rio Rancho in the summer of 1976 when you were there?

A No, they told me no. I had inquired.

Q When you said to Mr. Arkin on cross examination that the house that you were looking at in the northeast section of Albuquerque for $33,000, there was no comparison between that house and the houses you saw at Rio Rancho, is that correct?

A Right.

Q Can you explain that?

A Well, how can I explain that now? It was a bigger house. It had three bedrooms the same as Rio Rancho but the rooms were larger. They had a fire place in it.

Q This was the house in the northeast section?

A Yes.

Q Was that a new house?

A Yes, they were building those homes.

Q Were there other homes being built that you said that this was a development in northeast section?

A Yes.

Q Do you recall in answer to Judge Metzner's question that at the time that you bought the land you knew it was undeveloped land?

Do you recall Judge Metzner asking you that question?

A Yes.

Q And that you knew that it was undeveloped land without utilities, do you recall that question?

A Right.

Q And at the time that you bought this land at the dinner, was the cost of utilities included in the price that you were paying for the land as far as you understood?

A As far as I understood it, that that would be included.

Q Was it your understanding when you bought this undeveloped land at the dinner that did not have utilities that the company would provide utilities to your lot?

A Right.

Q And was it your understanding that if the utilities had not reached your lot, at that time and only at that time would you have to exchange into a lot that did have utilities?

A Right.

Q Was it your understanding when you exchanged your lot from unit 23 into the lot in unit 20 that you wanted to build on that lot in unit 20?

A Right.

Q And that was the reason why you exchanged into unit 20?

A Right.

Q Do you recall Mr. Arkin asking you on cross examination if there were new homes in Corrales Heights between the time you first visited Rio Rancho and the later times when you visited Rio Rancho?

A Yes.

Q Can you describe for the jury approximately the location of Corrales Heights? Let me show you Defendants' Exhibit BW in evidence.

Can you point out on that map where Corrales Heights is?

A Where is the Panorama Inn? It is right across the road.

Q Let me direct your attention to writing that says Corrales Heights. Is that Corrales Heights?

A Right.

Q Does this map have the highway that says Route 528 on it?

A Yes.

Q And is Corrales Heights east of 528?

A Right.

Q The land that you purchased in unit 23, is that west of 528?

A Right.

Q And the land that you purchased in unit 20, is that west of 528?

A Yes.

Q And the land that you purchased in unit 7, is that west of 528?

A Yes.

MS. HYNES: Your Honor, may I show this to the jury?

THE COURT: It is not necessary. Go ahead.

MS. HYNES: Your Honor, I would just like to point out Corrales Heights.

THE COURT: I said it is not necessary. She has identified it. The map will be available to the jury for a long time and will be available for a long time.

Go ahead.

Q Do you recall on cross examination, Mrs. Bonavisa, that Mr. Fleming read from a property report, dated December 5, 1969, that stated that water and utilities would not be available to certain lots for an indefinite number of years and that the company -- let me read the entire paragraph.

Lots may also be purchased for speculative purposes but such purchasers are advised that resale for profit may be difficult for a number of years in view of the fact that water and utilities may not be available to certain lots for an indefinite number of years; that a percentage of the purchase price paid is included thereon for use in advertising and development and that in trying to make a resale thepurchasers may be competing with the company which has thousands of lots to sell.

Do you recall Mr. Fleming reading that paragraph to you?

A Yes.

Q This property report is dated December 5th of 1969. You purchased your property, the first acre of residential property you purchased in March of 1970, is that correct?

A Right.

Q Was anything said to you in March of 1970 about how much property remained at Rio Rancho to be sold at the time you attended that dinner?

MR. FLEMING: Objection.

THE COURT: Sustained.

Q In March of 1970 when you purchased your property, were you aware that the company was negotiating to buy another 37,000 acres?

A No.

MR. FLEMING: Objection. I ask to strike.

THE COURT: Sustained. Strike the answer. This is not proper redirect.

MS. HYNES: Your Honor, it is related to the testimony that Mr. Fleming brought out from this property report.

THE COURT: It should have been brought out on your direct case, not on your redirect.

Q Do you recall Mr. Fleming asking you about the various trips that you took to Albuquerque over the years?

A Yes.

Q Were those trips basically vacations for you and your husband?

A Yes.

Q TUe friend that you testified on cross examination who was going to buy the property, was this a co-worker of your husband's?

A Right.

Q How did he learn about Rio Rancho?

A From a lot of other people and, you know, Louis used to talk about it.

Q So your husband interested this co-worker in buying one of his lots?

A Yes.

MS. HYNES: I have no further questions.

THE COURT: You may step down.

(Witness excused.)

THE COURT: Next witness.

MS. HYNES: The government calls Leon Fox.

XXX LEON FOX, called as a witness by the government, after having been first duly sworn, testified as follows:

XXX DIRECT EXAMINATION

BY MS. HYNES:

Q Mr. Fox, where do you live?

A 170-90 Isaloop, Bronx.

Q I want you to keep your voice up, Mr. Fox, so everybody in the jury box can hear you.

How old are you?

A 55.

Q Are you married?

A Yes.

Q Do you have any children?

A Yes.

Q Is your wife employed?

A Yes.

Q Where is she employed?

A At the supermarket, Consumers Society.

Q Are you employed?

A Yes.

Q How are you employed?

A I am self-employed.

Q How are you self-employed?

A I have a sewing machine repair shop business.

Q Where is your repair business?

A 303 West 36th.

Q Is that in New York City?

A Right.

Q How long have you had that repair shop?

A This repair shop at present two years.

Q Prior to that, what was your employment?

A Self-employed. I had a loft at 315 West 36th Street.

Q Was that still a sewing machine repair shop?

A Right.

Q Basically have you always done that type of work?

A Right.

Q Do you own land at Rio Rancho?

A Yes.

Q How much land do you own?

A Two acres.

Q What was your first contact with Rio Rancho Estates, if you recall?

A Well, I got a postcard inviting me to a dinner at the Bronx somewhere, I don't remember exactly where, and we went to thedinner.

Q Did you go to the dinner with your wife?

A With my wife, right.

Q When you arrived at the dinner, were you seated at a table?

A Right. We were seated at a table and they served us dinner.

Q Were there other people at the table?

A Yes.

Q Was there a sales representative at the table?

A Yes.

Q Do you recall the sales person's name?

A Miss Pat Mack.

Q Mack, M-a-c-k?

A Right.

Q Were you shown a film at this sales dinner?

A Right.

Q Was there a speaker in the front of the room?

A The speaker was talking about the film when they were showing, what Rio Rancho and Albuquerque looks like.

Q Did you buy land that night?

A Yes. I bought land.

Q What was the reason for buying the land?

A With minor objections, I asked the salesman --

Q I am asking you what was your reason for purchasing land that night.

A Well, for speculation. I figured I would make a big profit, after we saw the film and how Albuquerque, New Mexico is developing and my wife says, we have a good chance to make some profit in here and we bought land.

Q What do you recall that the speaker said about buying land at Rio Rancho?

A It's growing. The cities are getting overcrowded with people.

Rio Rancho has to grow because there is only one way from Albuquerque to go is towards Rio Rancho.

Q Did the speaker say anything about a comparison between an investment in land at Rio Rancho and other types of investments?

A Well, he mentioned that the money we get in the bank is very little and Rio Rancho might be a good idea for people who want to invest in a good solid -- I mean growth, whatever you call it.

Q WUen you were at the dinner, what, if anything, happened with respect to your dealings with the sales person at the table?

A After the dinner was finished, it was like a manager, I don't remember his name, I remember his jacket, a navy blue jacket with gold buttons, I asked him personally can I have the contract before I do anything.

He says not, you cannot have the contract. I said I would like to show it to my lawyer. He says no, you cannot.

Then the salesman came over and started his sales pitch to sell us the land.

Q Was this Pat Mack that you spoke about or was it somebody else?

A No, it was Mr. Stasiewicz, whatever his name was. He's Polish.

Q Your sales person was a Mr. Stasiewicz?

A Right.

Q The person who you just described in the conversation, the person who said you couldn't take the contract out of the room to show your lawyer, who was that?

A He, I think, was the manager managing the whole dinner, I think.

Q Was he the person who was the speaker in the front of the room?

A This I don't remember.

Q Let me show you Government Exhibit 161-A for identification and ask you if you recognize this.

A Yes.

Q Is your signature on that?

A Right.

Q Is this the land that you bought at the first dinner that you attended?

A October 15, 1971, yes, I did.

MS. HYNES: I offer 161-A.

MR. SPRIZZO: No objection.

XX

(Government Exhibit 161-A received in evidence.)

THE COURT: You bought the two units?

THE WITNESS: Two units.

MS. HYNES: May I read from this, your Honor?

THE COURT: Yes.

(Ms. Hynes read from Government Exhibit 161-A in evidence to the jury.)

Q Mr. Fox, was the purchase price of $5,630 for the piece of property in unit 13 and in unit 17?

A Right.

Q Were each of those pieces of property one half acres?

A One half acre.

(Ms. Hynes continued reading from Government Exhibit 161-A in evidence to the jury.)

Q Mr. Fox, I am going to show you on this contract, it is Government Exhibit 161-A in evidence, the paragraph where your initials appear.

There are initials. Are they your initials?

A Yes.

Q Those initials appear next to the paragraph relating to receipt of a property report and offering statement.

Do you recall whether or not you received a property report or offering statement at that dinner?

A No. The only thing we did is they gave us the paper, sold us the land, give us the paper and which I refused because I didn't have a check and I could not sign it.

He says we will give you our check and that's all. He says we have six months to make up our mind whether we go to visit Rio Rancho and then decide whatever we want to do.

Q So they gave you a blank check for you to complete for your down payment, is that correct?

A Right.

Q After you signed the contract, did they give you a packet of material to take home?

MR. SPRIZZO: I hate to object to the leading, but it has been going on for quite a while. I object to the form of the question.

THE COURT: Overruled.

A I don't recall that. I don't remember. I will say I don't remember. It could be yes, it could be no, I don't remember exactly.

(Continued on next page.)

Q Did there come a time when you visited Rio Rancho Estates?

A Yes.

Q And you mentioned just a moment ago that there was a six month period when you cancelled.

Did you visit Rio Rancho Estates within that six month period?

A Yes, I did.

Q And did you take a company tour to Rio Rancho?

A Yes.

Q Do you recall how much the tour cost?

A $453 per person.

Q Was that per person or for you and your wife?

A For me and my wife, pardon me.

Q And did your wife go with you on the tour?

A Right.

Q When you arrived in Albuquerque, do you recall where you stayed?

A We stayed, I think, in -- I don't remember the name of the hotel.

Q Was it a hotel or motel that was on the property at Rio Rancho Estates?

A No, outside.

Q Pardon?

A Outside Rio Rancho Estates.

Q Was it in Albuquerque itself?

A I don't think so, no, no.

Q In any event, it was not the Panorama Inn at Rio Rancho Estates?

A It's not the Panorama Inn, no.

Q How long was the tour that you were on?

A I think it was four days. Three nights and -- four nights and three days. I'm not sure.

Q Did there come a time when you went to see your property when you were on that tour?

A Yes, the last day.

Q Pardon?

A The last day of the tour they took us to the property.

Q And let me ask you what you did on the other days before you went to see your property.

A Well, we went touring, seeing Albuquerque.

Q How were you transported?

A By bus.

Q Was this a bus with other people on the same tour?

THE COURT: Do we have to go through all this? We have done it 14 times now. That is enough, Ms. Hynes.

Q Mr. Fox, when you got to the property and this was the day you were going to see your property, were you taken to see your property?

A Yes. We went to see our property, lot 17 and 13.

Q Were you taken to see any other piece of property?

A Yes. He said they reserved for us two pieces of land, two half acres in lot 25, and he took us up to the hill and he said, "Down below is lot 25. Do you care to see it, to go closer?"

I said no.

It was late, already, about 2:00, I wanted to go back for lunch. I didn't care to see it because I figured I wouldn't buy it anyway.

Q Was this the sales person who was taking you in the car?

A The sales person who took us to see the lot.

Q And did ou come back to the sales office?

A Then he took us back to the office and went into the office and start talking to us and he filled out all the particulars, and I said, "I'm not buying anything any more."

Q What did he fill out?

A The papers. He give us all the particulars, the paper that says what we can buy it for.

So then he says, "You can buy instead, for example, was two half acres I think was $2100 a half acres." He says, "If you buy it in the corner, you get it for $700 more, you get the corner two lots and will be a bigger value."

And I said, "Forget it."

And. I walked out from the office. My wife followed me, and he followed us.

Q TWen what happened?

A And he went in a different room and he says to somebody, a salesman, whatever was there, I mean, the head man from the office, he says, "Mr. and Mrs. Fox don't want to sign, they don't want to buy no more."

He come out, he says, "Mr. Fox, you are losing a big chance."

Q Who is saying that to you?

A This man, the other man, like, I don't know who he was, the manager. I don't remember his name.

He says, "You don't want to buy any more. We will reserve it for you. It's a good chance slipping through your fingers and you shouldn't do that. It's a big thing. It's once in a lifetime comes a chance like that."

I says, "I don't want it. I don't think I should go on bigger expense."

So my wife answered, says, "I'm buying it, I'm working for it and I'm buying it."

Q In any event, did you end up purchasing the lots in unit 25?

A After he came out and do the pressure, we agreed. My wife says, "Let's sign it. Let's buy it."

Q I am going to show you what has been marked Government's Exhibit 161-B for identification (handing).

Is this your contract to purchase in unit 25 (handing)?

A Right.

And I also want to add to it, I still didn't have a check at that time. I didn't take a check with me and they give me their check. He says, "We have our check. You can sign it."

Q I am going to direct your attention to this paragraph here.

Are those your initials, where it is checked (indicating)?

A Well, it must be. I don't recall this initials. I recall this initials (indicating).

I see mine signature on it and my wife's signature.

MS. HYNES: I offer 161-B.

MR. SPRIZZO: No objection.

XXX (Government Exhibit No. 161-B marked for identification received in evidence.)

Q At the time that you purchased these lots in unit 25,did you intend to relocate to Rio Rancho?

A Absolutely not.

Q And at the time that you purchased your land in October of 1971, in unit 13 and 17, did you intend to relocate?

A No. Only for -- for business reasons, to make a profit on it, to sell it and make a profit on it.

MS. HYNES: Your Honor, I would like to read from 161-B.

THE COURT: All right.

(Ms. Hynes read from Government Exhibit 161-B in evidence to the jury.)

(Ms. Hynes read from Government Exhibit 161-A in evidence to the jury.)

Q Mr. Fox, when you were at the property, did you sign a form stating that you were satisfied with your purchase?

A I don't remember that.

Q Let me show you --

A Could be.

Q Let me show you Government Exhibit 161-C (handing).

Does your name appear on that?

A I cannot make it out.

It could be, because they said they will give me $300 back of the purchase of more land if I buy more land.

Q Did you get a vacation travel allowance?

A That's what was $300, right.

Q Did you make any efforts to resell your land?

A I did.

Q What did you do?

A I asked the salesman, when he called me after we went for the tour -- I mean, the trip to New Mexico. They called us for dinner, and I asked the salesman if I -- he told me my land went up.

I said, "How about buying it from me?"

Q This is Mr. Stasiewicz?

A Yes.

"Would you buy it from me if I want to sell it to you now?"

He says, "No, I cannot buy it, I am here to sell land, I cannot buy from you any land."

Q Do you still have your property?

A Yes.

THE COURT: When was all this?

THE WITNESS: This was when we came back from New Mexico, it was maybe about six months later they called us for dinner.

I said -- he said, "We have to sell our land first, what we own."

Q Did he give you --

A Before we will be able to buy your land, or whatever.

Q Did he tell you how much land they had left to sell?

A No.

Q Did he give you any idea of how fast the land would be sold out?

MR. FLEMING: Objection.

A He did not. He didn't know himself.

MR. HYNES: I have no further questions.

THE COURT: Is cross examination going to be extensive?

MR. SPRIZZO: Well, about a half hour, I think, Judge, 20 minutes.

THE COURT: Mr. Arkin?

MR. ARKIN: Well, after Mr. Sprizzo, I don't think I will have much to say, so I will take his estimate of time.

MR. FLEMING: He has never practiced withnim, Judge.

THE COURT: I think maybe we better go home. I don't trust them.

See you Monday morning at 10:00.

Have a happy Thanksgiving.

(The jury left the courtroom.)

THE COURT: Mr. Lavinsky has an application.

MR. LAVINSKY: Your Honor, actually, it is a matter that arises out of the reciprocal discovery that has been continuing for some weeks.

There are 18 documents that we maintain are privileged and we would like to have a ruling with respect to them.

They are in a bound folder and I would like to ahdn that up to your Honor (handing).

THE COURT: Let us get it marked for identification.

(Defendant AMREP Exhibit CL marked for identification.)

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MR. LAVINSKY: We don't want to have them in evidence.

THE COURT: They are not marked in evidence. They are marked for identification.

We have to have some identification mark on it.

Go ahead, Mr. Lavinsky.

MR. LAVINSKY: Your Honor, most of the documents are pretty self-evident.

There are just a few that are not which I would just like to briefly mention.

Item 1 -- and they are marked 1 through 17 and then there is an 18th document which is not numbered and which is loose in the back -- the first 17 items, your Honor, the marked ones, are documents that the defendant Solomon Friend would want to mark into evidence in the event that he remains in the case by the time the defendants go on, and we object on the basis that they are privileged documents.

The first item, your Honor, is a script, and it is a script with proposed changed in handwriting and the handwriting is the handwriting of the defendant Solomon Friend.

We maintain that that is privileged because he is, in effect, advising his client as to changes that he proposes.

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MS. HYNES: Your Honor, I just --

MR. LAVINSKY: That is also a premarked exhibit, I understand. That is what Ms. Hynes maybe is going to mention.

We have asserted the attorney-client privilege with respect to that documet on the premarking and we, of course, assert it at this time.

With respect to Item 5, your Honor has already ruled that that is privileged.

We have included it because that is one of the documents that the defendant Friend would like to offer.

Item 6 is a report from Arthur S. Mandel, who is a house counsel, one of the house counsel for AMREP.

Item 14 we do not claim as privileged, except for the handwritten material on the first page, your Honor.

With respect to Item 17, that is, again, a document with proposed changes in the handwriting of the defendant Solomon Friend.

The final document, which is the lost document in the back, is the only other document as to which a ruling on privilege is required, because it contains a request from an AMREO officer for information from the legal department and it is on that basis that we object to it as being privileged.

Now, all of the documents either involve advice given by an attorney to client or in a couple of instances involve a request for advice or information by the client from attorney, and we, therefore, claim the privilege with respect to each of those documents.

THE COURT: I didn't understand your comment regarding the loose document referred to as No. 18 in which you said, " That is the only document"--

MR. LAVINSKY: That is the only other document besides those that the defendant Solomon Friend seeks to offer into evidence that we required a ruling with respect to privilege.

THE COURT: Do I gather Items 1 through 17 are documents that Friend wants to offer?

MR. LAVINSKY: Yes, your Honor.

THE COURT: What is 18?

MR. LAVINSKY: 18, your Honor, is a document which the corporate defendants may desire to offer, but only in the event that evidence is adduced which breaks the attorney-client privilege.

We maintain it is a privileged document if, as we believe, the privilege will stand through this trial that we do not intend to offer it, we claim it is a privileged document.

If, on the other hand, your Honor rules that the privilege has faulted in whole or in part and it would include this document, then we would intend to offer it in evidence.

Obviously if the privilege is maintained, we don't want to show it at this time to the government.

THE COURT: All right.

Now Ms. Hynes.

MS. HYNES: Your Honor, I am not familiar with the bulk of the documents which have been handed up, obviously, but with respect to the script Mr. Lavinsky referred to which has markings by the defendant Friend, I would just mention for the record that judging from the number -- and I can verify it further -- but judging from the number I have on mine, this was something that was submitted, I believe, to Judge Pollack. He ruled on it as non-privileged.

At this point I don't recall whether your Honor has ruled that you were going to rule at another time.

THE COURT: I said I was not bound by any ruling by a prior judge regarding the admissibility before a grand jury. That is what I am ruling.

MS. HYNES: That is Point 1.

Point 2 is, again, we would raise the same argument that there has to be a factual showing with respect to, for example, this script.

The script was produced. There is no fact showing here that there was any confidentiality maintained on these documents, that if the documents were not confidential communications either seeking or giving legal advice, that the attorney-client privilege does not attach.

Even if the communication was to obtain legal advice or to give legal advice, if the confidentiality was not maintained, as Judge Friednly pointed out in the Horowitz case, it no longer holds its privilege, the privilege is waived if there is no continuation of the confidentiality of the document.

So Mr. Lavinsky has more of a burden than simply handing up these documents and asking your Honor to rule based upon simply reading the documents whether or not they are privileged, he has the burden to go forward and affirmatively prove, as Judge Friendly set out in the Horowitz case, that the confidentiality of these documents were maintained and that that confidentiality is not going to be assumed.

We have no such showing here, and I would suggest, particularly with respect to the document relating to Mr. Friend's marking on the script, it seems very obvious from what has gone on before that there is and has been no confidentiality of that document that has been maintained.

THE COURT: That has been published, hasn't it?

MR. LAVINSKY: Your Honor, there have been scripts published, but we don't know, because we have not compared, whether all of the changes or what particular ones of the changes may appear in the published script as distinguished from ones that he recommended which were not published.

THE COURT: You better check it. I am not going to check it for you.

MR. LAVINSKY: Your Honor, we will do that.

MS. HYNES: I think the issue here, your Honor, is whether or not if the movie was changed in every respect to go along with the markings here, the issue really is the markings and Mr. Friend's changes and marking on that script.

THE COURT: You are changing your argument.

Your argument seems to be if Mr. Friend made suggestions and those suggestions were then made public, there is no confidentiality. That is your argument.

MS. HYNES: Then I didn't state it clearly, your Honor.

My argument is that if this document with Mr. Friend's markings were not -- the confidentiality of that document with the markings was not maintained, then the privilege no longer exists for that document, and that is the holding in the Second Circuit.

THE COURT: You are not saying anything different from what I said..

MS. HYNES: But I am saying with the markings.

The government would be entitled to introduce this document with Mr. Friemdn's markings on it, not simply a clean copy of the changes.

THE COURT: That is not the point. I understand the point, Ms. Hynes.

If he put his markings on this and they didn't accept any of them, you couldn't use that document. That is what the argument is to me.

You are saying yes, you can, even though none of the indicated changes were used.

The client asks for your legal opinion on something, the attorney furnishes it, and then the client does not act upon it, you are saying that nevertheless the attorney's suggestions are admissible?

MS. HYNES: Whether or not the client acts on the advice isn't the controlling issue about whether a document is privileged.

What I am talking about is the confidentiality of the document.

It could be that Mr. Friend gave legal advice and it was not followed, that the document was not -- the confidentiality of the document was not maintained and it would not be covered by the attorney-client privilege.

THE COURT: How do you not maintain the confidentiality of the document?

MS. HYNES: By having it in public files, but not segregating it out.

This was gone into in detail in the Horowitz case and in Judge Friendly's opinion.

THE COURT: You mean an attorney gives advice to his corporate client and it is put in the file where the communications are normally kept --

MS. HYNES: Yes.

THE COURT: -- it loses its confidentiality?

MS. HYNES: Yes, yes.

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THE COURT: I doubt it. I would like to see your authority for that.

MS. HYNES: We will submit it to you.

THE COURT: All right. You better submit it to me on Friday.

What is your next point?

MS. HYNES: Your Honor, of course, the obvious point by this is it is relevant evidence to show Mr. Friend's knowledge and intent. I mean, that is --

THE COURT: You knew you were running into this problem.

MS. HYNES: I am simply saying --

THE COURT: You have a balance in here. You know this is a problem of -- the problem of severance has been raised several times in this case.

MS. HYNES: Your Honor, it is the government's position that this is not a privileged document under the case and under any showing.

THE COURT: I asked you for your next point and now you are giving me your next point, which is this.

MS. HYNES: Your Honor, this is the only document I can speak to. If there are other documents that have been premarked and Mr. Lavinsky can tell me I can argue the other documents.

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THE COURT: That is the only one he says has been premarked, the script.

MR. LAVINSKY: As far as I know, that is the only one, your Honor.

THE COURT: All right. See you on Monday.

MR. FLEMING: Your Honor, have a nice holiday.

MR. WEIDNER: Your Honor, I assume my silence in the last five minutes is not construed as not raising any objections.

THE COURT: Do it now. I may rule before you get around to do it.

MR. WEIDNER: I understand that. You are talking now not simply about the privileged question?

THE COURT: I am talking about these documents which you must know about. I assume Mr. Lavinsky has told you.

MR. WEIDNER: Yes, sir.

THE COURT: If you want me to have your position on these documents, get them to me by noon on Friday.

MR. LAVINSKY: Your Honor, there is one more thing I should state for the record.

You will note as you go through these documents that some of them are stamped "Privileged".

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That is a stamp that was affixed by the client, not by any --

MS. THOMPSON: No, no. Let me correct the record, please.

It was a stamp affixed by counsel after some of the Part I Judge's ruled that the document were privileged.

That was only part of our internal record-keeping.

THE COURT: You want me to follow the Part I Judge?

MR. LAVINSKY: By all means, Judge.

(Adjournment taken to Monday, November 29, 1976, at 10:00 o'clock a.m.)

day

WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
Dennis Finnerty	2483	2509	2538	
Leon Switt	2539	2568		
Anna Bonavisa	2591	2621	2654	
Leon Fox	2661			

EXHIBIT INDEX

Government	Identification	In Evidence
164-C		2488
164-B		2498
164-D		2505
164-E	2506	2507
164-F	2507	2507
158-F,158-H		2545
158-G		2548
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158-C		2555
158-J	2558	2559
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126-A	2596	
126-B	2602	
126-E		2611
126-G		2619
161-A		2667

EXHIBIT INDEX

	Identification	In Evidence
Defendant Howard Friedman and Henry Hoffman		
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BY	2511	2512
BZ	2517	2518
CA	2521	2522
CB	2521	2523
CC	2569	
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CH	2583	
CI	2584	
CY	2589	
Defendant Chester Carity and Daniel Friedman		
CK		2622
Defendant AMREP		
CL	2677	

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UNITED STATES OF AMERICA

v.

AMREP CORPORATION, et al

76 Cr. 644

November 29, 1976
10:10 A.M.

Trial Resumed

(In the robing room)

THE COURT: Yes.

MR. ARKIN: Your Honor, just to clarify one thing.

Your Honor has ruled that when we utilize statements which we previously have taken from witnesses, that is myself, Mr. Arisohn, people from other law firms in the course of preparing for this trial, that we may not identify the person, the lawyer who took the statement if that person happens to be somebody working on this very case in the court.

THE COURT: That was done in conjunction with the possibility you may have to use that lawyer and he will be disqualified in this case.

MR. ARKIN: I understand what your Honor was saying. Would it be permissible if I were to ask a question such as the following: Do you recall on such and such a date speaking to a lawyer from AMREP or a lawyer who talked to you on behalf of AMREP?

THE COURT: You don't need the word lawyer. That doesn't make it any stronger.

MR. ARKIN: Just a person then.

THE COURT: A person.

MR. ARKIN: If the witness were unfortunately to come back and say yes, I spoke to you or that man over there, is that something which puts us in an unfortunate position?

THE COURT: Well, I think he can say without identifying the person.

I am trying to let you get your question in without fouling up your case.

MR. ARKIN: I will use a person.

MR. FLEMING: If you just say without naming the person, did you speak to someone.

MS. HYNES: I think Mr. Arkin's question is if he then gets an answer that surprises him or contradicts what was said in another statement, is he in an untenable position. I think he is unless he is willing to put the other person on the stand.

THE COURT: That is the problem.

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MR. ARKIN: That is my problem. Whether I seek to impeach is my problem which I will take up at some later point.

MS. HYNES: Your Honor, I have an application, with respect to Mr. Fox on Wednesday afternoon, he was the last witness that the government called. He began about I think about 4:30, Mr. Fox is sole proprietor of a small shop. I had told him I thought we could finish with him by Wednesday and I was hoping we could. We weren't able to get to cross examination.

In my haste to complete Mr. Fox' testimony I did not put in a mailing for him. He is a count witness. Since we do have to go over to today with Mr. Fox, I do have other questions to ask him on direct. I have spoken to Mr. Sprizzo and he does not have an objection to my continuing.

THE COURT: All right.

MS. HYNES: Your Honor, I just have one other application. That is the government had served on the defense counsel a trial subpeona for various microfiche of the company files and we had explained that the reason for asking for these microfiche were that these were letters that we would seek to introduce that had come from the company to a purchaser and without the need of calling each of the purchasers there is a reason for introducing this letter an admission by the corporation or whatever.

We simply wanted the company to either say that, yes, this letter did appear in their microfiche, in their corporate file and we would have other testimony testifying to the fact that when a letter is on a microfilm it is an indication that the letter has been mailed out and basically what we are trying to do is speed up the process here and not have to call a lot of witnesses from other parts of the country simply to identify a letter that we want to get into evidence which we can do in a very simple way through these microfiche.

We have again renewed our application to have the defendants turn over these microfiche or at least give us a statement that these letters which have been premarked and I can give them the specific exhibit numbers do appear in the microfiche and this part of the government's proof I expect will be coming up within the next week and therefore we need a resolution on it.

THE COURT: Have you seen the type of letter that Ms. Hynes wants?

MR. LAVINSKY: I have not. I spoke with Ms. Thompson who checked the subpoena. It is a subpoena dated September 14, 1976 calling for documents with respect to nineteen people.

Your Honor quashed that subpoena except for those people who are actually on the will-call list.

The only one who was on the will-call list was Ann Greenberg who has already testified and your Honor quashed the subpoena to that extent on October 22nd. It is on page 205 of the transcript.

Now, as far as checking the microfiche, if it is going to speed up matters, we will certainly try to check it, your Honor, but it is going to take some time and if I can get the exhibits we will try to do it.

THE COURT: I think that is important. I think the defense has to have an opportunity to look at the exhibit to see whether they are going to let it in that way. They may say that there is information in that letter which you wanted the jury to take as true and they will have been prevented cross examinationof the writer.

MS. HYNES: I have the exhibit numbers. I gave them to Ms. Thompson. I can give them again to counsel. I have no objection to their knowing the specific exhibits.

THE COURT: Give them to them now and let them read them overnight and let's have a specific objection from counsel on the ones you wish to offer.

As far as the subpoena is concerned, it was quashed, as I recall, simply because it was September 14th and the trial was going to be at that time November 6th. There is no point in serving you with a new subpoena --

MR. LAVINSKY: Your Honor, I understand that.

THE COURT: You have the subpoena now before trial. You are in the middle of trial now. Let's get down to the substantive objection. Get from Ms. Hynes during the morning recess the exhibit numbers, look at them and then come in and make your objection at that time.

MR. LAVINSKY: Fine, your Honor.

THE COURT: There is one thing I want from you, Ms. Hynes. Your trial brief doesn't go far enough. It doesn't take the last step for me as to how these individual defendants are tied in, what your theory is for tying them in and what your proof is against them for tying them in.

You tell me what the scheme is and you tell me what you are going to prove as far as the scheme, but I want to know from you how this proof ties each individual ojw

defendant in and your theory of law as to how they are liable.

I will need that shortly because there are going to be motions made at the end of the government's case. I will give you a week to get me that brief.

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MS. HYNES: Your Honor, we will try to do our best. We are in the middle of this trial and preparing witnesses. All the lawyers are working seven days a week, 12 to 14 hours preparing witnesses and putting witnesses on the stand. There is very little time to start doing that kind of a brief.

THE COURT: I would have thought you would have had this done long before trial.

MS. HYNES: Your Honor, in terms --

THE COURT: You knew before you started trial what your theory is and how you are going to hold each defendant individually liable. I thought that's what I was going to get when you were telling me during the summer that I was going to get a trial brief. I need it. Not when you get up to argue before me, I need it at least a week before so I know how to rule.

MS. HYNES: Your Honor, we will --

THE COURT: I would assume, as I said before, that you had this done before you ever started the trial.

MS. HYNES: We did not have a trial brief before we started the trial, your Honor, but we will endeavor to get to your Honor a week before the government rests --

THE COURT: No, next week, a week from today. I want time to look at it and check it out.

MS. HYNES: Your Honor, part of the problem with doing something like that is that at this point evidence that we expect will come in, if it has not come in, that is part of the problem.

The other really serious problem in this type of case is to give the government's theory and proof on each individual defendant in a criminal trial. We would have no objection to giving your Honor such a brief, again that part of the brief ex parte, but I thik to give that -- if it is an aid and I agree that it would be an aid to the court in determining motions, but to start turning over that part of the brief with respect to each defendant and the proof and the government's theory and how it would argue even before that proof has been offered into evidence I think is really tipping the government's hand much too much.

THE COURT: I made my ruling in that area four months ago. I don't know why you keep arguing with me.

MS. HYNES: I shouldn't use the phrase tipping the government's hand, but certainly in terms of a criminal case, I know of no criminal case in our office where the government has had to turn over to the defendants an extensive brief which is really in aid of the court but had to turn over to the defendants --

THE COURT: I told you I was ruling that way in this case. I am on the record as saying that in the summertime. We are now in November.

Your office took at least a year and a half to prepare this case for the grand jury.

You also ran, you, I mean the government, ran a parallel of the credit investigation of these defendants with open hearings throughout the country which I think I stopped in July.

You and at least three of your cohorts have been working fulltime for a year since the date of the indictment, to the date of trial with a notice to you that the trial was a year off. It is a massive case, there is no doubt about it, but you certainly within one year of intensive work after the findings of the indictment and preparing this case for trial can't come in and tell me now that you can't give me what I need.

I have made the ruling in the summertime. I want that brief.

MS. HYNES: Your Honor, our objection at this point is to giving that part of the brief to the defendants --

THE COURT: I understand that and I have ruled against you on that on the record four months ago. You ought to take my rulings when I hand them down. Don't hold off and say I am going to ignore the Judge's ruling and four months later on November 29th tell me you are still not going to comply with what I said I wanted last summer.

MR. FLEMING: I would like to say I don't know how they could have presented the case to the grand jury for indictment of the individuals without a legal theory to support that indictment based upon the evidence before the grand jury and rational inferences and case law.

THE COURT: I don't care how they did it. I want the brief. Last summer I said I wanted the brief. Last summer you made the objection to turning it over. Last summer I directed you would turn it over and you have just thumbed your nose at the court and said I am just not going to do it. We are now on November 29th and I want it.

MS. HYNES: Your Honor, we gaveyou an extensive trial brief --

THE COURT: Not satisfactory, Ms. Hynes.

MR. FLEMING: I want to make my point clear. It is inconceivable to me that at this stage of the proceedings they would not have immediately available whatever legal support they have for a theory of connection since they must necessarily have had to have had one at the time they presented it to the grand jury or properly should have had one.

THE COURT: I think I made that clear in detailing the background of this case. All right.

MR. LAVINSKY: Your Honor, there is one other item. You had requested us to compare the script with the handwritten notations of Mr. Friend which was the first of the items of the 18 items we submitted to you for a ruling on privilege. We have compared it with the script of Your Golden Future as revised and submitted to the New York State Department of State.

We find that that script as submitted to the New York State Department of State is Government's Exhibit 842-A. Aside from a number of editorial changes, we find that there were four -- at least four substantive changes in the revised script which were not reflected in the -- that is, there were at least four substantive changes in the suggestions by Mr. Friend that were not accepted and reflected in the revised script and then there were a number of editorial changes.

Furthermore, there are number of markings, about half a dozen markings in the script such as circled words and question marks which do not appear to be reflected in the script as ultimately submitted to New York State.

THE COURT: I have a number of problems with that. I went over it on Saturday. I don't think this is the time to take it up.

For example, I don't know what the markings mean in some cases.

MR. LAVINSKY: We don't either, your Honor.

THE COURT: I don't know what a circle means. I don't know what a half circle around words means. I don't know who put it there.

I don't know how to interpret it.

We can take that up either this afternoon or tomorrow afternoon. I would like to get some testimony in here today. It is now 20 after 10. Let's go outside.

(Continued on next page.)

A.AM gtjb

(In open court; jury present.)

XXX LEON FOX, resumed.

THE COURT: You may proceed, Ms. Hynes.

XX DIRECT EXAMINATION (Continued)

BY MS. HYNES:

Q Mr. Fox, you spoke to me this morning, is that correct, before you came to court?

A Right.

Q Mr. Fox, you testified that at the time that you went to the first dinner and purchased Rio Rancho land, which was this October of 1971, that there was a comparison between an investment in land and money in the bank.

Do you recall testifying to that on Wednesday?

A Yes, I did, I did.

Q And was there a comparison between an investment in land or any other type of investment other than the bank?

A Well, stock market --

Q What was said about an investment in the stock market as compared to land?

A The stock market, they told me -- they said, they didn't tell me, they said you can lost it in the stock market, but you can never lose in the land. Land you can always -- I mean, always growing and the price is always going up.

Q When you purchased your land in October of 1971, did you receive insurance on that land?

A Yes, I did, on the second acre.

Q Let me show you what has been marked as Government's Exhibit 161-D for identification.

Do you recoagnize that (handing)?

A Right.

I had to pay a thousand down and be the right age, I should be eligible for this insurance, they told me.

Q You testified on Wednesday that you visited your land in approximately January of 1972.

The land that you purchased when you went to see it, that was undeveloped land, is that correct?

A Right.

Q And what was to be done to the undeveloped land that you purchased?

MR. ARKING: Objection.

A Well, they would develop it, eventually.

THE COURT: Overruled.

A It will be developed and I will be able to sell it for a big profit.

Q And how would that land be developed?

A This I didn't -- I didn't go into it.

I figured they will develop it, whatever they will have to do, and they will be able to build and make a profit or sell it, whatever.

Q Did the price that you paid for the land include this development by the company?

A I assumed so.

MR. SPRIZZO: I move to strike his assumption, your Honor.

THE COURT: Sustained.

Q Mr. Fox --

THE COURT: What were you told that led you to believe that they were going to do it?

THE WITNESS: Well, for one reason, when I went to the dinner and Mr. Stasiewicz always said my land went up what I bought already, so I assumed that my land will go on a year or two or whatever, my land will go up and be worth more money.

THE COURT: That isn't the question that was put to you.

Reframe your question.

MS. HYNES: I will, your Honor.

Q Mr. Fox, when you went to the first dinner, did you see a film?

A Yes. I saw a film. They said --

Q Wait, Mr. Fox. Just listen to my questions.

In the film, did you see a developed portion of Rio Rancho?

A Right.

Q When you went out to the property, was there a developed portion at Rio Rancho that you saw?

A Right.

Q And then your land was not in the developed portion, is that correct?

A Correct.

Q And what did you expect to be done to your land, the undeveloped land?

A They would develop it --

MR. SPRIZZO: Objection, your Honor.

THE COURT: Sustained.

Not what was expected, what he said.

A They --

THE COURT: Wait.

You can only get from the witness what he expected after you bring out what he was told so the jury can assume whether the inference is justified or not.

Q Was anything said to you, Mr. Fox, or was anything shown to you --

A Yes.

Q -- which led you to believe that your land would be developed?

A Well, they showed us Rio Rancho Estates and they are building at that time was lot 7 and how they build it up, and they said eventually they will go on building lot by lot, which means section to section, and I believed they will come to my section 13 and I'll have a -- and I'll be all right.

Q When you returned from the tour in the beginning of 1971, you testified that you attended a second dinner about six months after returning from the tour.

Do you remember that?

A Right.

Q Did you attend any other dinners after returning?

A Yes, I did.

Q After you returned from the tour, how many dinners in total did you attend?

A I would say about three or four dinners.

Q And can you give us the best of your recollection as to when you attended those three or four dinners?

A Say between 1972 and 1973 and 1974.

Q And at these dinners that you attended in 1972, '3 and '4, was Mr. Stasiewicz present?

A Right.

Q How did you get invited to these dinners?

A They did send me a card, invited me for dinner, and at the dinner they explained -- showed the film again and told the people, like, here's Mr. and Mrs. Fox, both land owners from Rio Rancho, and how was it there.

I said, "It's beautiful, the country is beautiful, nice."

And the people sitting by the table said, "You really liked it?"

I said the country is marvelous and I hope to make money out of it.

Q Was anything said at the dinners that you attended after you returned from the tour, was anything said to you about your prior investment in Rio Rancho?

A Yes. They said -- Mr. Stasiewicz said, "Mr. Fox, after the dinner is finished," -- he says, "I have something for you. Don't go away. Wait."

After this he says, "I've got something," that he says, "you can buy more land and make more money. Do you know how much money your land has already made already? Two acres, at least about $1,000."

And he said, "Can you imagine if you buy more."

I said, "Mr. Stasiewicz, I don't want to invest any more in land, that's all."

He says, "Yeah, but look at the money. You take your acre, the finished acre which you paid already, and we put it closer a little bit so they built up, now when they are getting 13 and 17, it will take longer to build, to develop, this way we give you closer and you will be able to make a better investment, a bigger profit."

I figured, I mean Stasiewicz, what you asking me to invest, at that time money I paid off already and make more payments, for what? I don't want it.

And this was going on about two, three dinners later, and every time the same thing and I stopped.

I says, "Forget it, finit, go home." I won't buy any more, I won't invest any more land. I will wait and this is going up, the profit, I mean, will be enough and I will be able to sell it and this will be the finish.

Q When you were told at these dinners that your land had increased in value, what did you believe -- withdrawn.

When you were told at these dinners that your land had increased in value, did you believe you could resell your land?

MR. ARKIN: Objection.

A Positively.

THE COURT: The objection is overruled.

A Positively.

Q Mr. Fox, are you still making payments on one piece of land?

A Yes. I have one payment to make, the 1st of December of this coming month.

Q And do you make payments each month -- have you made payments each month on that piece of land?

A To the bank and I get the receipt, that's all.

Q Where is the bank located?

A In New York, the Chemical Bank.

Q Did you make a payment on your land at Rio Rancho in October of 1975 at the Chemical Bank of New York?

A Right, every month, the 1st of the month it was paid.

MS. HYNES: Your Honor, I have no further questions.

THE COURT: Do you have anything to offer?

MS. HYNES: No, I don't have a document to offer on that mailing.

THE COURT: Go ahead.

XXX CROSS EXAMINATION

BY MR. SPRIZZO:

Q Mr. Fox, I believe you testified you bought your first piece of land in October of 1971, is that correct?

A Right.

Q And was it your testimony that when you bought this land, you went to a dinner?

A Right.

Q At that dinner, you were shown a film, is that correct?

A Correct.

Q Then you spoke to a salesman, is that correct?

A Correct.

Q I believe you testified that when you asked the salesman to see the contract, he wouldn't let you see the contract?

A It wasn't the salesman, it was the manager.

Q He would not let you see the contract?

A Right.

Q Did that make you a little suspicious?

A It did.

Q Had made you a little worried that you weren't dealing with honest people?

A In the beginning, until the salesman came up.

Q You are a businessman, aren't you, Mr. Fox?

A Right.

Q You buy supplies and equipment in connection with your business?

A But you always listen to, sometimes to a salesman. I figured maybe this man is overworked or whatever, was tired and --

Q My question was, do you do business with suppliers in connection with your sewing machine business?

A Right.

Q Do you sign contracts?

A Right.

Q Do you do business with people who won't let you see what you sign?

A No. They -- I always see what I sign.

Q But in this case you didn't, is that your testimony?

A I would say I didn't in respect --

Q My questionis, in this case you didn't? That can be answered yes or no.

A I didn't, no.

Q Did you testify on direct examination that the reason why you purchased this land was for speculation?

A Yes.

Q By speculation --

A To make money.

Q And in every speculation, Mr. Fox -- you are an experienced businessman -- there is a risk, is there not?

A I won't -- I won't word it exactly speculation. I didn't go in to say I'm going to speculate, I says --

Q Do you want to hear your testimony?

A The man, the salesman said I'm going to make profit, you understand, and that's why I bought it at the first dinner because I was going -- he did not tell me I'm going to speculate.

Q Do you remember your testimony last Wednesday in this court house?

A A figure of speech.

Q Do you remember being asked this question by the government:

"Q I am asking you what was your reason for purchasing land that night.

"A Well, for speculation."

MS. HYNES: What page, Mr. Sprizzo?

MR. SPRIZZO: Page 2664.

MS. HYNES: That is not the whole answer.

Q Let me finish the answer with respect to the government.

"A (Continuing) I figured I would make a big profit, after we saw the film and how Albuquerque, New Mexico is developed and my wife says, we have a good chance to make some profit in here and we bought land."

That was your answer, was it not?

A Yes.

Q Has it been your experience, Mr. Fox, that when you speculate there is some risk involved?

A Not in land. I was told at the dinner, "You'll risk on the stock market, you can lose, but not on the land, because it's going up." That was my intention of buying this.

Q Do you have investments in the stock market?

A Right.

Q Do you have investments in mutual funds?

A Right.

Q Did you make money in all of them?

A No. I lost in the stock market.

Q Have you lost money in the stock market?

A Right.

Q Have you lost money in the mutual funds?

A No.

Q How much have you lost on your stocks in the stock market?

A Say approximately, as it stands now, I won't -- I don't know exactly the figures, what it's worth now, but I have to get into it and take a look for it.

Q When you bought those stocks, did the broker tell you it was a sure thing?

A I went in with the knowledge I'm speculating of risking.

But here I was told by the speaker in the front, the salesman and by countless, I mean, countless times I went there, "You can only lose money in the stock market, but not in land." And that's why I bought it. That's why I believed.

Q So you are changing your testimony as of Wednesday that you bought this land for, as you said, speculation, is that correct?

A For business.

Q You said for speculation.

A I mentioned business, also, if I remember correctly.

Q We will get to that, Mr. Fox.

You testified you went out to Rio Rancho, isn't that correct?

A Pardon me?

Q You went out to see your land at Rio Rancho?

A Right.

Q Correct?

A Right.

Q And somebody took you out there in a touring car?

A Yes.

Q And you stood on your own land and you could see the land, is that correct?

A Only two half acres.

Q But you could see your own land? You could stand on it, is that correct?

A I stood on my two half acres. That's what they told me.

Q And you could see with your own eyes how far your land was from the developed area of Rio Rancho, is that correct?

A Well, I couldn't see the developed -- I couldn't see the developed area from my land.

Q It was very far away, was it not?

A Right.

Q And at that time you knew, didyou not, Mr. Fox, that it would be quite a while before your land was developed?

A Not according to the salesman when he said they are building continuously, and to my knowledge, I figured -- I says, how long will it take it to go -- if 9 is developed, 7 they are building, I am 13, however would it take to go 13? It's only a few things, a few numbers.

Q Is it your testimony, Mr. Fox, that you did not know when you stood on your land -- right, is that your testimony -- how long it would take for your land to be developed?

A Well, I didn't ask exactly how long it would take, no.

(Continued on next page.)

Q You never spoke to anyone about it?

A No, I never did, no.

Q Never asked any of the representatives of Rio Rancho how long it would take for your land to be developed?

A No, because for one reason, I saw it. They told me how fast it was growing.

I mean, I am not going to repeat myself and say how long will it take to go from here to over there.

Q Isn't it true you did ask one of the salesmen, that you did ask one of the salesmen how long it would take to develop, and he said, "God only knows"? Isn't that true?

A This was the salesman when he was standing on the land he asked me -- I asked him on the second acre, I asked him how long would it take to build on 25, on 25, not on 13, 17.

13 and 17 I knew would be soon some day, but not on 25.

Then when he told me "God knows," and then I decided not to see the land, not to buy it any more.

Q You didn't buy any more land?

A I did, but in my mind I decided I wouldn't buy it at Lot 25.

MR. SPRIZZO: Can we mark this the next number for identification.

(Defendants Chester Carity and Daniel Friedman Exhibit CM marked for identification)

Q Is it your testimony, Mr. Fox, that your conversation with the salesman related not to the first land you purchased but the second?

A The second land, right.

Q I am going to show you what has been marked Defendants Exhibit CM for identification, which is a letter you wrote, and without reading the letter aloud, would you read that letter to yourself, please.

(Handing)

(Pause)

A The first land of Rio Rancho when will be received --

Q Don't read it aloud, just read it to yourself.

A Oh, to myself?

Q It is not in evidence.

Turn over the page, because the portion I am going to ask you about is on the next page.

(Pause)

Is it not true, Mr. Fox, that the conversation with the salesman about the land occurred, according to your own letter, prior to the time that you purchased the second piece of land and it was about the land you had purchased previously?

A No, sir.

MS. HYNES: Your Honor, there are two questions here.

A No, sir. I'm sorry.

Q I will rephrase the question.

A I'm sorry. It does not say here the purchasing of 17, it says the land I purchased, which means I was talking about the land I was going to purchase which I wouldn't buy it no more.

MR. SPRIZZO: Your Honor, I would offer a portion of this letter in evidence.

THE COURT: Show it to Ms. Hynes.

(Pause)

MR. SPRIZZO: Your Honor, just for the sake of the record, the document to which I am referring in compliance with the discussions we have had has been produced by the government for us as required by law.

MS. HYNES: Your Honor, we have no objection to the entire letter going into evidence, otherwise it is out of context, the one paragraph that Mr. Sprizzo wants to offer.

MR. SPRIZZO: I have no objection to the entire letter going into evidence, your Honor, except I don't think the person to whom it is written should go into evidence, because I think that is unfair.

A Can I say something?

MS. HYNES: No, Mr. Fox.

THE COURT: I agree, you don't need the citation.

(Defendants Chester Carity and Daniel Friedman Exhibit CM received in evidence)

MR. SPRIZZO: May I read the pertinent portions, your Honor?

THE COURT: Yes.

What is the date of that letter?

THE CLERK: On here it has April 14, 1975.

THE COURT: All right.

THE CLERK: Excuse me, April 9, 1975.

MS. HYNES: Your Honor, with respect to Mr. Sprizzo's application to read a portion of that, we would ask to have the entire letter read on the grounds of completeness.

MR. SPRIZZO: They can read it on direct.

THE COURT: Mr. Sprizzo can read what he

wishes and you can read what you wish.

(Mr. Sprizzo read from Defendant Chester Carity and Daniel Friedman Exhibit CM in evidence to the jury)

Q The letter does state, does it not, Mr. Fox, that you purchased your additional land after your conversation with the salesman?

A My writing and mine dictating in writing this letter was the exact what I said before. After the salesman told us about the reservation they have for us, another acre, on Lot 25, he asked me -- I mean, I asked him when would they build on 25 and that was the answer, "God only knows."

But I didn't mark down on Lot 25, but that's what I meant in this letter.

Q I think the jury can --

MS. HYNES: Your Honor, we don't need Mr. Sprizzo's --

THE COURT: The document speaks for itself.

MR. SPRIZZO: Yes.

Q Mr. Fox, when you went out to Rio Rancho, were you treated well while you were out there?

A Beautiful.

Q You had a nice time?

A 2880

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Fox -cross

Q Nice, very nice.

Q Good vacation?

A Nice, yes.

Q You liked New Mexico, did you not?

A The weather is beautiful, nice, oh, yeah, I could not -- very nice weather.

Q And I believe you testified on Ms. Hynes' direct examination that when you went to these subsequent dinners, you told the people at these other dinners the land was beautiful.

A I said New Mexico is beautiful. I didn't say the land was beautiful. I didn't have to say nothing about my land.

Q What other part of New Mexico had you been to other than Rio Rancho?

A Albuquerque. It's beautiful weather, nice. I said always, I mean, New Mexico is beautiful, nice weather, clean air. I mean, that's all. I mean, I said, I mean, what's the truth. I liked it, I liked New Mexico and its beautiful weather.

Q And your testimony on direct examination was, as I recall, that you went to these dinners after you had been out to New Mexico, isn't that correct? You went to three or four more dinners.

A Right.

Q And at those dinners, the company called upon you basically to endorse their product, did they not?

A That's why -- that's why I stopped going. Twice they told me --

Q Will you answer my question, Mr. Fox?

A Yes.

Q The company called upon you, in effect, to endorse their product?

A They didn't tell me to endorse it.

Q They said, "Mr. Fox, he has been out to New Mexico," right?

A Right.

Q How do you like it, Mr. Fox?

What did you say?

A I said beautiful country.

Q Did you tell anybody at the dinner that Rio Rancho had subjected you to "high pressure sales tactics"?

A Well, I --

Q Yes or no, Mr. Fox?

A No, I did not go into it.

Q You have answered my question.

A Yes.

Q When you were out at New Mexico, I believe you testified you did not stay in Rio Rancho Estates' Panorama Inn, is that correct? You stayed in a motel outside of Rio Rancho.

A Yes, yes.

Q Were you there by yourself with your wife or were other people with you from other parts of the country?

A I mean, other people with me.

Q Other people who had bought land in Rio Rancho?

A Right.

Q And you had some free time while you were out there, did you not, Mr. Fox?

A No.

Q You had no free time at all, is that your testimony?

A The only free time we had was in, I mean, when we went to sleep, I think.

Q You did not have any three or four hours in the middle of the day to do what you wanted to do, is that your testimony?

A Most I think the middle of the day we went touring, I mean, seeing scenics.

Q Did you ever think about going to a real estate broker in Albuquerque to find out, you know, what your property was worth?

A No, I didn't. I should have, but I didn't, no.

Q Never crossed your mind?

A No, not at that time, no. We don't think of everything.

Q Was it your testimony on direct examination that the decision to purchase the second piece of property was your wife's decision?

A Yes, my wife, I mean -- actually, I would say the salesman was pressuring us and the language he talked -- he said, like, "You are letting through your fingers such a good deal, such a good deal."

And my wife says, "Maybe all the people are buying and he says it's so good, maybe we should."

Q Wasn't your testimony last Wednesday, Mr. Fox, and I am quoting from page 2673 of the record, you said in response to the government's question,

"I says I don't want it, I don't think I should go on bigger expense, so my wife answered, says, 'I'm buying it, I'm working for it and I'm buying it'.

A That's what she said.

Q So the decision to purchase the second piece of land was your wife's decision and not yours?

A I mean, mainly she influenced me the same way as the salesman. She says, "Mama's working and Mama's going to pay for it," but I should have let my Mama walk away from it, but I didn't.

Q Isn't it also true, Mr. Fox, after that visit to New Mexico, you and your wife made a decision to pay for your first parcel of land in full?

A Because I told my wife --

Q No. Just answer my questions and I will then ask you another question.

A Yes, yes.

Q In other words, you decided to pay it in full?

A The first two acres, yes.

Q And you sent Rio Rancho a check for some $4772, approximately?

A No. I think it was 42. I'm not sure.

Q In the vicinity of $4,000?

A Yes, yes, over $4,000.

Q This was after you had been out there and after you had been subjected to what you say were high pressure sales tactics?

A Yes, because I didn't want a bigger -- $104 a month. I signed for it. I had to pay.

Q Just one or two more questions, Mr. Fox.

After you had been out to Rio Rancho and subjected to these "high sales pressure tactics," you went to three or four more dinners.

A Yes, yes, for curiosity, mainly.

Q You didn't want to buy any more land, did you?

A No. I wanted -- I wanted to see what is going on, how they are building, how it is growing, and Mr. Stasiewicz, I think, was the second time he told me my land is worth -- it's going up, it's worth more money, so I figured let's see how much it's going up now.

Then when I found out, after the third time, I mean, I saw this is what only his interest is to sell me more land and exchange it for other land, make more payments, that's when I stopped. That's why I went maintainly for.

Q You are a man of some experience, Mr. Fox. Did you believe they were inviting you to these dinners for their health or your health?

A No. I mean, I went. I went not for what they were thinking, I went for what I was thinking, to find out what -- how Albuquerque is growing.

The last time they called me, they said there is a new film.

Q Mr. Fox, you knew when you went to each one of these sales dinners that Rio Rancho's purpose in inviting you was to do business in selling land to you, didn't you know that?

A Yes, I did, but I always rejected that, sure, sure.

Q You are not naive, you understand that?

A Sure, sure.

Q You take the company's free dinner, you are a businessman enough to know that the company is not in business to feed you but to sell land; isn't that correct?

A Correct. That's what I told Mr. Stasiewicz, I would not buy up all NewMexico.

MR. SPRIZZO: I have no further questions.

MS. HYNES: May I have just a moment, your Honor.

THE COURT: Mr. Arkin is cross examining.

MS. HYNES: I am sorry.

CROSS EXAMINATION

X XXXX BY MR. ARKIN:

Q Sir, you testified that it was your wife who persuaded you to buy the second piece of property.

A Right.

Q She was very much like a salesman to you at that point.

A I wouldn't say like a salesman, she only repeated the word from the salesman to me.

Q Before you came down here on Wednesday and testified, you spoke to Ms. Hynes, didn't you?

A Right.

Q You spent some time with her?

A Right.

Q How much time did you spend with Ms. Hynes?

A I didn't look at the watch exactly.

Q What?

A I didn't look at my watch exactly the time. I could not say it.

Q Can you give me an approximation?

A A half hour, an hour, something like this.

Q Was that the same day you testified?

A This was previous, prior to the testifying.

Q How long previous to that?

A It was a Saturday, it was about an hour, and when I came down to testify was maybe about fifteen minutes to a half hour, I believe.

Q Was your wife with you when you came to see

Ms. Hynes?

A No.

I mean, the first time, yes.

Q She was with you the first time?

A Yes.

Q And she spoke to Ms. Hynes, too?

A Right.

Q Did you tell Ms. Hynes that your wife was the one who made the decision to buy the second piece of property?

A Right.

Q And you told her that you didn't want to do it, but that your wife had influenced you in that decision?

A I won't say mostly my wife, the salesman --

Q Answer my question.

Did you tell Ms. Hynes that your wife had influenced you in that decision?

A In a way, yes, she had the evidence, yes.

Q Did Ms. Hynes ask your wife if she were willing to testify?

MS. HYNES: Objection, your Honor.

THE COURT: Overruled.

Q Did your wife ask Ms. Hynes -- rather, did Ms. Hynes ask your wife whether your wife was willing to testify?

A My wife does not remember, she says. She doesn't.

MR. ARKIN: I have no further questions.

THE COURT: All right.

MS. HYNES: Your Honor, I would just like to read the part that Mr. Sprizzo did not read of Defendants Exhibit CM.

It is a letter dated April 9, 1975.

(Ms. Hynes read from Defendant Exhibit CM in evidence to the jury)

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MS. HYNES: I have no further questions.

RECROSS EXAMINATION

XXX BY MR. SPRIZZO:

Q With reference to the portion the government just read, dealing with your visit to the sales dinner at which you purchased your first piece of property, Mr. Fox, do you believe everything you are told?

A Where?

Q Do you believe everything you were told by salesmen?

A Not always. Sometimes.

MR. SPRIZZO: I have no further questions.

THE COURT: You may step down.

(Witness excused)

THE COURT: Next witness.

MR. KAUFMAN: The government calls Selma Switt.

SELMA SWITT, called as a witness by the Government, being first duly sworn, testified as follows:

THE COURT: You may proceed.

MR. KAUFMAN: Thank you, your Honor.

DIRECT EXAMINATION

BY MR. KAUFMAN:

Q Mrs. Switt, where do you live?

A Flemington, New Jersey.

Q Are you married?

A Yes.

Q What is your husband's name?

A Leon.

Q Are you aware that he was here last Wednesday?

A Yes.

Q Do you have any children?

A Yes, we do.

Q How many children?

A Two.

Q Are you currently employed?

A Self-employed.

Q What type of business?

A I own a private school.

Q What does your husband do for a living?

A He is semi-retired but works at the Liberty Bell Race Trace in Philadelphia.

Q What is your educational background?

A Mine is high school plus some college.

Q Do you own any land at Rio Rancho Estates?

A Yes.

Q How much land do you own?

A Five acres.

Q Have you paid for all this land?

A Yes.

Q Do you recall how much money you paid?

A I believe it was $11,500 either $45 or $80, I cannot quite remember exactly. That was the actual cost at the time it was purchased.

Q Did you pay more than that?

A Well, we paid interest. ,

Q Do you recall how much the interest was over the years?

A Somewheres in the neighborhood of $400.

Q Per year?

A No, I think total.

Q For the full term of the contract?

A Yes.

Q When did you first hear about Rio Rancho?

A Excuse me?

Q When did you first hear about Rio Rancho Estates?

A We were asked to come to a dinner at one of the restaurants.

Q Do you recall what year that was?

Q Excuse me?

Q Do you recall what year that was?

A Probably in '67 or '68. I am not sure. '68, I believe.

Q Did you go to that dinner?

A Yes, we did.

Q Who did you go with?

A My husband.

Q Do you recall where that dinner was?

A In Trenton, New Jersey.

Q Do you recall how many people were seated at your table?

A There was another couple besides ourselves.

Q Anybody else?

A Not that I recall. There was the salesman. There was a salesman.

Q Do you recall approximately how many people were in the restaurant?

A I'd say in the vicinity of 50 to 75 people.

Q Do you recall what happened at that dinner?

A Well, slides were shown to us of Rio Rancho. Very nice slides showing scenery of their buildings and lovely green grass and trees, horseback riding, golf, a golf course was shown.

They had a motor inn that they had built that they showed.

In general it looked very nice.

Q What else happened at the dinner?

A They also spoke about investments, that there would not be any other investments other than real estate wouldn't give us the returns if we invested in Rio Rancho we would get great returns.

Q What other investment did they compare to an investment in Rio Rancho?

A Oh, I guess putting your money in the bank or securities, bonds, I don't know, stocks, anything you would normally invest your money in.

Q Was anything said about Albuquerque and its growth?

A Yes, that Albuquerque was growing in leaps and bounds and had nowheres else to go but towards Rio Rancho to grow.

There were some obstacles, mountains, Indian reservation, some other land grant that belonged to some -- I believe another country.

Q Did you buy land that night?

A Yes.

Q What was your reason for buying land?

A Well, my husband had for many years expressed a desire to live in the southwest and it was presented so nicely I thought this was a good opportunity to buy some land and have it for our retirement since this is where he would like to live. He also wanted to live where it was warm all year round. That is the reason for purchasing the land that night.

Q I show you what has been marked Government Exhibit 158-G for identification and ask if you can identify that.

A This is what was given to us when we sat down at the tables after dinner and the salesman with us pointed out the different parcels or sections that would be for sale.

Q This listed the lots that were available for sale that night?

A Lots available that night.

Q Did you buy one of the parcels available on this list?

A Yes, we did. I believe it was one of the larger ones.

Q I show you what has been marked Government Exhibit 158-D for identification and ask if you can identify that?

A Yes, but I don't recall whether it was the same night or not.

Q Do you see your signature on there?

A Yes.

MR. KAUFMAN: The government offers 158-G and 158-D.

MR. ARKIN: No objection.

(Government Exhibit 158-D and 158-G received in evidence)

MR. KAUFMAN: If I may refer to a portion of these exhibits, your Honor.

(Mr. Kaufman read from Government Exhibits 158-D and 158-G in evidence to the jury)

Q Before you decided to buy the land, Mrs. Switt, toward the end of the dinner presentation did the sales people at the dinner do anything?

A Yes. Every so often one of the sales persons at another table would shout out, wait a minute or hold such and such a parcel was sold.

It sort of built up something within you to hurry up and buy something before it would be completely gone. Psychologically the evening was spent sort of at a pitch. I mean to this buying thing.

MR. ARKIN: If your Honor please, I ask that be stricken.

THE COURT: Sustained.

Q Did you and your husband visit Rio Rancho Estates soon after that dinner?

A Yes, I believe in April of that year we vi$ited.

Q How did you and your husband travel to New Mexico?

A Well, he had to go out on business to California and I met him -- I flew out and met him there and then drove back with him and stopped in Albuquerque there at Rio Rancho.

Q What happened when you arrived at Rio Rancho?

A They were very nice and cordial and put us up for the night. Showed us our land.

Q Who showed you your land?

A I believe a representative of the office, I couldn't tell you just who he was.

Q Do you recall about how far your land was?

A Yes, we started driving, I didn't think we were ever going to get there --

MR. ARKIN: Your Honor, may we have that stricken.

THE COURT: Sustained. Just tell us facts.

Q About how long --

A Eight or ten miles, I would say. It took about ten to fifteen minutes because the roads are rough.

Q What happened --

MR. ARKIN: I move to strike that, if your Honor please.

THE COURT: I struck it.

MR. ARKIN: The last one.

THE COURT: What else do you want stricken aside from what I have stricken?

MR. ARKIN: The roads were rough.

THE COURT: Overruled.

Q What happened when you arrived at your land?

A We didn't find good land. We found a washed out sort of gulley, a swale.

Q What did you do, if anything, when you saw your land?

A Well, we said we didn't want it.

Q Just continue telling us what happened.

A Then we were taken -- well, he said we can do something about this and we were taken to the office and through a lot of conversation and what not we were encouraged to buy other land.

Q Were you encouraged to buy other land or to transfer into other land?

A Well, transfer this to other land, the same amount of acreage and we were shown some nice land because in comparison we were up on the mesa and shown a very beautiful view and suggested that we buy ten half acre lots for our five acres.

Q Were these ten half acre lots that you were suggested to buy, were they contiguous lots?

A No, when we got back to the office, we were asked if we would buy ten half acre lots every other lot. The reason they gave was that in the event someone bought a lot next to ours, we would be more apt to sell ours because he would want a bigger -- he might want an acre for his building site.

Q You are referring to somebody who owned one of thoselots in between yours?

A Right. That wasthe reason given to us that it would be a good selling point to buy them that way.

Originally -- may I go on?

Q Yes.

A Originally, we had hoped to have five acres together so that we could have a little -- sort of a little ranchette and it was told to us the ranchette would soon be occupied and that we could trade our land for that.

That was the original reason for buying five acres, but then when we went to see our five acres it wasn't so and the ranchettes were yet not available so we liked where we thought the ranchettes were going to be, it was pointed out to us, and so we thought, well, we will go ahead with teh ten half acre lots and were told we could in time change those for the ranchette and that this would be a good sales promotion thing, having every other lot.

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Q That would be in the eventuality you wanted to sell?

A We would still go back to the ranchette. Since we are talking ranchettes, may I say that originally we were told that we could have animals and it was.

I questioned the salesman at the time of the sales and he said he would find out for sure and he called back and said we could have horses.

Q Did you ever find out differently?

A Yes. We found out that that isn't so.

Q Who did you find out from?

A At the office when we went out to Albuquerque.

THE COURT: At the same time that you were there?

THE WITNESS: Yes. The first trip.

THE COURT: This all occurred the first day or two days?

THE WITNESS: The original salesman said we could have horses.

THE COURT: We are talking about your asking the salesman whether you could have animals.

THE WITNESS: Yes, that was the original -- yes, sir.

THE COURT: He said yes, you could.

Did you find out before you left that trip that

THE WITNESS: Yes, because that's why we took the ten half acre lots.

THE COURT: All right.

Q At that time were you also told anything about a resale office being opened?

A Yes. We were told that that would soon happen in the future.

Q I show you what has been marked Government Exhibit 158-B for identification and ask if you can identify that.

A This is when the lots were exchanged for the ten half acres.

Q You recognize your signature on there?

A Down here.

Q I show you what has been marked Government Exhibit 158-C. Can you identify your husband's signature on there, directing your attention here (indicating)?

A Yes, that's his signature.

Q Do you know if the writing above that is his handwriting?

A Yes.

Q Do you know of the handwriting above his signature --

A That's mine.

MR. KAUFMAN: The government offers 158-B and C.

THE COURT: Any objection?

MR. ARKIN: No objection.

XXX (Government Exhibits 158-B and C received in evidence.)

MR. KAUFMAN: May I read portions of these, your Honor?

THE COURT: You may.

(Mr. Kaufman read from Government Exhibits 158-B and C in evidence to the jury.)

Q Mrs. Switt, I show you what has been marked Government Exhibit 158-C and ask if you can identify that.

A Yes, it is a letter I wrote to Rio Rancho.

Q I show you what has been marked Government Exhibit 158-E and ask if you can identify that.

A Yes, I remember this.

Q Was this letter in response to the letter you wrote?

A Yes.

MR. KAUFMAN: The government offers Exhibits 158-J and E.

MR. ARKIN: No objection.

XXX (Government Exhibits 158-J and 158-E received in evidence.)

MR. KAUFMAN: If I may read these letters, your Honor.

(Mr. Kaufman read from Government Exhibits 158-J and E in evidence to the jury.)

Q What was the Crosswicks Country Day School?

A It was a school that we owned and I ran.

(Mr. Kaufman continued reading from Government Exhibits 158-J and E in evidence to the jury.)

Q By the way, Mrs. Switt, did you or your husband receive life insurance when you purchased the land?

A Not when we purchased it. When we went to visit it, if we paid an extra amount of moneys, then we were eligible for the life insurance.

Q Did you pay that extra amount of money?

A Yes, we did. I believe it was 800 and some odd dollars.

Q That was life insurance on --

A On my husband.

THE COURT: I don't understand. Was this an $800 premium or was it applied to the purchase of the land?

THE WITNESS: It applies to the purchase of the land.

THE COURT: Oh. In other words, you didn't pay

$800 for the life insurance policy, you paid $800 -- wait --

THE WITNESS: I am sorry.

THE COURT: You paid $800 which was applied to your purchase price for which you received the insurance policy, is that it?

THE WITNESS: It wasn't offered to us until we visited there.

THE COURT: That isn't what I am asking you, is it?

Q Was this a setoff against your monthly payments?

A Yes.

THE COURT: The way the assistant asked you the question originally, I had the impression that you were called upon to pay $800 for an insurance policy, period. It is now clear that it wasn't. The $800 was applied to the purchase price and reduced what you owed them, is that right?

THE WITNESS: It did.

THE COURT: Okay.

Q Did you and your husband return to Albuquerque sometime thereafter?

A Yes, I believe we went again in '73, the summer of '73.

Q How did you go to Albuquerque on this occasion?

A We were on a cross-country trip in a motor home.

Q Did you go to Rio Rancho Estates?

A Yes, we did.

Q What happened?

A We were taken out to see our property again and told how much it had increased in value.

Q Was a figure given to you?

A 33,000 and some dollars.

Q How long did it take you to get from the property office to your land in 1973?

A The same distance as the first time. I would say between 8 and 10 miles which would be about 15 minutes.

Q Continue telling us what happened.

A Well, when the gentleman told us how much it had increased in value, we were happy and we told him we had changed our plans and would like very much to sell them because we definitely weren't coming out to Rio Rancho to live in our retirement.

Since we were interested in getting rid of it, we would be glad just to get our money back plus whatever interest we had paid and that Rio Rancho would have the opportunity to sell the land again and make that money, but we really wanted to dispose of it.

Q And --

A And the salesman said that Rio Rancho was not in the business of buying property. He referred us to a man that could take the listing.

Q Who was that?

A A Mr. Heinz in Albuquerque.

Q Did you and your husband visit Mr. Heinz?

A Yes, we did.

Q Is that H-e-i-n-z?

A Yes, I believe so.

Q Did you list your property with Mr. Heinz?

A We listed our property with Mr. Heinz, he had many, many others which he showed us with pins on a map, the different properties that he had listed and he took a $50 retainer fee.

Q For how long a period of time was your land listed with Mr. Heinz?

A Well, it was a yearly thing.

Q Was he able to resell it for you?

A No, I made a contact and he said he had not been able to do anything with it. He also -- I think I asked a question one time through a contact --

MR. ARKIN: Your Honor, I object.

THE COURT: Sustained.

Q Did you make any other attempts to resell your land?

A In the newspaper.

Q What newspaper?

A The New York Times, which I didn't get any results. The Albuquerque paper and I did get two calls.

Q Did anything come of those inquiries?

A No.

MR. KAUFMAN: May this be marked 158-K.

XXX (Government Exhibit 158-K marked for identification.)

Q Mrs. Switt, I show you what has been marked Government Exhibit 158-K for identification and ask if you can identify that.

A Yes, I placed this ad.

Q You are referring to the one that's circled in red?

A Yes.

MR. KAUFMAN: The government offers 158-K.

MR. ARKIN: No objection.

XXX (Government Exhibit 158-K received in evidence.)

MR. KAUFMAN: If I may just read from this, your Honor.

(Mr. Kaufman read from Government Exhibit 158-K in evidence to the jury.)

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Q Mrs. Switt, have you and your husband paid for your land in full now?

A Yes.

Q And you own it?

A Yes, as far as I know.

Q Do you recall how you made the payments to Rio Rancho Estates?

A I sent $150 a month, sometimes very late, because there were instances where I had to go and borrow money to pay these payments.

MR. ARKIN: I move to strike it, your Honor.

THE COURT: Sustained.

Q Did you mail the money anywhere?

A I mailed them in envelopes to a bank in New York that they provided.

MR. KAUFMAN: The government offers 158-A.

MR. ARKIN: I have no objection if you will redact that portion.

MR. KAUFMAN: Yes.

XXX (Government Exhibit No. 158-A marked for identification received in evidence.)

MR. KAUFMAN: May I just read from a part of this, your Honor?

THE COURT: You mayh.

(Mr. Kaufman read from Government Exhibit 158-A in evidence to the jury.)

MR. KAUFMAN: I have no further questions, your Honor.

THE COURT: You may cross examine.

XXX CROSS EXAMINATION

BY MR. ARKIN:

Q I am Stanley Arkin. I represent certain of the defendants in this case.

Ma'am, you say that you run a country day school?

A Yes.

Q That is for youngsters?

A Two to five.

Q How long have you been running that school?

A The school I'm in now is about two and a half years old.

Q And prior to that you had another one?

A Four years prior to that. I sold that one in 1972.

Q By the way, how much did you get for that?

A For the school?

Q Yes, when you sold it in 1972.

A We got 50,000 in cash and 150 in mortgages.

Q How long have you had a country day school, going bk to your first one?

A I've been in that business since 1947 with a four year break.

Q But you were in the business in the late '60's, I take it?

A Yes.

Q At the time when you bought Rio Rancho?

A Yes.

Q Was that a wholly-owned business, your nursery day school or --

A I didn't quite understand that.

Q Was that your own business?

A My husband and I owned it, but I ran it. It was my interest.

Q Did that business have a separate checking account?

A No. We always worked things together.

Q How many checking accounts did you and your husband have?

A We just had the one at that time.

Q And since that time?

A There may have been -- I remember opening a payroll account somewheres along the way, but that's all.

Q Where do you now live?

A We live in Flemington, New Jersey now.

Q In your own home?

A Now? No. We rent an apartment.

Q Previous to that did you have your own home?

A Yes.

Q Where was that?

A Previous to that we were in Browns Mills, New Jersey.

Q Was that on a farm or just a private home?

A No, it's a private home. It's on the outskirts of Fort Dix.

Q Before that did you have a private home?

A We went to a condominium retirement village and didn't like that.

Q What date did you go into a retirement condominium village?

A Let's see. That would be about three years ago, let's -- let's see. We sold in 1972, we were in there in the end of August of 1972 we had the retirement village.

Q How long did you stay in the retirement village?

A About a year and a half.

Q Did you buy a condominium there?

A Yes, we did.

Q How much did you pay for it when you bought it?

A Somewheres in the 30's. 30 -- I just don't remember.

Q Then you sold it?

A Yes. We made some improvements that the builder didn't do.

Q What did you sell it for?

A About 42.

Q In about a year and a half?

A Yeah. But -- all right.

Q I am asking the questions.

A Okay.

Q Previous to living in the condominium village, retirement village, excuse me, you had a farm, is that correct?

A Yes.

Q How long did you live on the farm?

A Ten years.

Q And do you recall when you bought the farm?

A It could have been somewheres around '48, '49.

Q 1948 or 1949?

A Yeah, somewhere in there.

Q Do you recall how much you paid for it?

A I think it was bought for 30 some thousand.

Q And then you sold it in about 1967 or 1968?

A We were there about ten years.

No, that would be '58.

Q 1958 you sold it?

A We didn't sell it, Mr. Switt went into a bankruptcy due to ill health. We did not sell it.

Q Were you able to keep your farm at that point?

A No.

Q After that, did you then come to live in another single-family home?

A After that, my husband took a position with a cattle buyer and we moved out to Wisconsin.

Q And you came back to New Jersey in what year?

A End of '58 we purchased the Crosswicks property and I set up the school?

Q And you lived there until you moved to the retirement village?

A That's right.

Q Aside from your being a school mistress -- is that the correct phrase?

A Yes.

Q I take it you also spent sometime in real estate?

A Oh, I took up real estate, I think, about two and a half years ago and went to school, and I've done very little with it.

Q You dabble in real estate, is that fair to say?

A Very little, because I have the school.

Q Do you have a license?

A Yes.

Q A New Jersey State license?

A Yes.

Q A salesman's license or a broker's license?

A Just a salesman's.

Q Prior to that, did you dabble in real estate a little, too?

A No, never knew anything about it.

Q You began that about two and a half years ago?

A Yes.

Q Aside from your land at Rio Rancho, did you own any other real estate at the present time?

A Just that school in Crosswicks. I mean, we have the -- we don't own it, we have a mortgage.

Q You own it and you have a mortgage with the bank, is that correct?

Excuse me, you own the mortgage?

A We have the first mortgage.

Q You have the first mortgage?

A Right.

Q You don't have the interest in fee, so to speak?

A We don't have the what?

Q You do not have the interest in fee?

A No.

Q Do you know what I mean in fee?

A I'm trying to remember what my course told me. Okay?

Q Okay.

I take it that when you first bought your property at Rio Rancho, that aside from your husband's desire to live in the southwest, that you also wanted to move there, didn't you?

A Not 100 per cent, really more for him.

Q Who was it who made the decision that night to buy the property, was it you or was it your husbannd?

A I think it was pretty much 50/50.

Q Both of you made the decision?

A Yes.

Q And both of you --

A Since I had a little arthritis, I think that kind of helped me, thinking I'd live where it was warm.

Q Warmer and dryer?

A Yes.

Q As it is in Albuquerque?

A Yes.

Q That evening, do you recall signing the agreement to purchase the five acres?

A Well, we signed something that evening, I'm sure.

Q I show you Exhibit 158-B (handing).

This is the agreement which you signed or a copy of it?

A I wish I could remember that many years back, but if that was the night of the dinner, yes.

Q Didn't you just identify this document for Mr. Kaufman?

A Yes, I did; yes.

Q Is it one that you signed?

MR. KAUFMAN: I think you want 158-D, Mr. Arkin (handing).

Check the date.

Q Is this the document which you signed (handing)?

THE COURT: Showing the witness what?

MR. ARKIN: 158-D.

A I did sign this document, but I don't recall if it was done that very night.

Q It may have been done later?

A It may have been done later.

Q You may have taken it home with you?

A Possibly.

Q And thought about it and then signed it?

A Possibly. I can't recall eight years ago. Okay?

Q I take it that you read the agreement that you signed?

A Yes, but I believe in people.

Q Did you read it --

THE COURT: Now wait, wait. Mrs. Switt, you understand questions. You are an intelligent woman. Just answer the questions. Please don't volunteer anything.

THE WITNESS: All right. I'll try.

THE COURT: Good.

Q You read this agreement before you signed it, didn't you?

A Yes, I believe I did.

Q At the time you read it, you knew that you had six months to go to Rio Rancho, and if you didn't like the property there you could cancel and get a full refund? You understood that, didn't you?

A I believe we had a year.

Q Well, would you read, if you will, from 158-D under "refund guaranty," and see if that refreshes your recollection as to how long you had?

A It does say six months, sir.

Q In any event, you did visit Rio Rancho within the six months, am I correct?

A Yes. I believe we went there in April.

Q Just about three months later?

A Yes.

Q You also knew, didn't you, that you had a right -- excuse me.

You knew when you purchased this property that it was undeveloped at that point, didn't you?

A Yes.

Q You knew it did not have utilities?

A Yes.

Q And you knew that you had a right to exchange one half acre of your property into the developed area in the event you wished to move there and build, isn't that so?

A Yes.

Q That was right in the contract, isn't that so?

A Yes.

Q You also knew you had another exchange right, which is that in the event you didn't like the particular property which you bought, you had five years to exchange that property into other undeveloped property. Did you know that?

A No.

Q Did you read the agreement?

A Probably didn't read that.

Q You only selected portions of the agreement?

A I must have if I don't recall the five years.

Q You don't recollect that, then?

A No.

Q By the way, excuse me, do you recall -- are you able to identify these initials on 158-D toward the bottom of the page? Are these your initials?

A L.S. wouldn't be mine.

Q That is your husband's initials?

A Right.

Q Can you identify his handwriting?

A Well, I could identify his complete name and that looks pretty close to L.S.

Q These initials always follow the sentence, "I/we acknowledge receipt of a copy of the restrictive covenants and the public reports, offering statement or prospectus applicable to the lots."

Do you know what a restrictive covenant is?

A Yes; the restrictions that would be there on the property.

MR. ARKIN: Would you mark this, please.

XXX (Defendants Howard Friedman and Henry Hoffman Exhibit CN marked for identification.)

Q I show you Defendant's Exhibit CY for identification (handing).

Are you able to recognize this document?

A Yes.

Q Is that a document you received when you purchased your land?

A I received it, but I don't recall exactly when I received it.

Q You could have received it a couple of days later?

A I could have, and I could have received it that night.

Q I see. But you received it about the same time, Mrs. Switt?

A Probably.

(Continued on next page.)

MR. ARKIN: We offer CJ.

THE COURT: CJ?

MR. ARKIN: Yes.

If your Honor please, there was a previous exhibit of a similar document and I decided to offer that.

I withdraw CN.

THE COURT: I think it would be better to leave CN in.

MR. ARKIN: All right.

THE COURT: Use CN.

MR. ARKIN: Yes.

May we transfer --

THE COURT: Where is CN?

MR. ARKIN: CN may be somewhat different than CJ.

May I hand both of them up?

THE COURT: No. You are the one who is offering them.

Show them to the witness and see if she recognizes it.

MR. ARKIN: We offer CJ.

MR. KAUFMAN: No objection.

THE COURT: Show it to the witness.

MR. ARKIN: I did, your Honor.

THE COURT: I thought it was CN you showed to the witness.

MR. ARKIN: No, it was CJ.

Q Is this the document I showed you before, Mrs. Switt, CJ?

A Yes.

THE COURT: All right, no objection.

Received.

(Defendant Howard Friedman and Henry Hoffman Exhibit CJ received in evidence)

MR. ARKIN: Your Honor, may I read one sentence from this exhibit?

THE COURT: You may.

(Mr. Arkin read from Defendant Exhibit CJ in evidence to the jury)

Q From time to time, Mrs. Switt, you requested and received certain materials about Rio Rancho from Rio Rancho, didn't you?

A Yes.

Q And you produced certain of those materials for the government at the government's request when they told you you were going to be a witness, didn't you?

A Yes.

MR. ARKIN: Would you mark this, please.

(Defendant Howard Friedman and Henry Hoffman Exhibit CO was marked for identification)

Q Mrs. Switt, this was among the documents which you produced for the government, was it not (handing)?

A I believe so.

MR. ARKIN: We offer it.

MR. KAUFMAN: Your Honor, may we approach the side bar?

THE COURT: You may.

I think we will have a recess.

(Jury left the courtroom)

(At the side bar)

MR. KAUFMAN: Your Honor, this is similar to a matter that came up when Mr. Switt was on the stand involving a different document.

Again, we would not object to this as something that the customer received, but we would object to the truth of the matter contained therein coming in through this witness.

THE COURT: That has been true of everything you have shown so far.

MR. KAUFMAN: When the government offers something against a party, it comes in underRule 801.

THE COURT: This is a witness whom you have produced who has received this document as part of a packet, I gather.

Is that your point?

MR. ARKIN: She received the document as either part of a packet or at a later request to the company. I know she received it from the company, your Honor, but I don't know whether it was from the original packet.

THE COURT: I will let it come in to show anything in here that gives her knowledge that affects her credibility, but nothing else I will let in, if that is what you want.

MR. KAUFMAN: I don't know if Mr. Arkin is offering it for that.

THE COURT: What are you offering it for, Mr. Arkin?

MR. ARKIN: I wanted to read certain portions which I will identify to your Honor right now.

THE COURT: Go ahead.

MR. KAUFMAN: I should say, your Honor, this is a report issued by one of the experts that the defendants have indicated they would be calling as a witness.

THE COURT: But if this witness read it and it is contrary to what she has said here orally, it impeaches her credibility, doesn't it?

MR. KAUFMAN: I don't think that is why Mr. Arkin is offering it.

THE COURT: He is now going to show you what he is going to show you.

MR. ARKIN: Let me tell the Court now why I want to offer it.

Your Honor, I had hoped to read a portion on page 4, the third full paragraph, through the first full paragraph on page 6, and then the third full paragraph on page 6, the point being --

THE COURT: Let me read it.

MR. ARKIN: Yes, certainly.

(Handing)

(Pause)

THE COURT: Objection sustained.

MR. ARKIN: The entire document, your Honor?

THE COURT: If that is what you are going to read, I am saying sustained.

(Recess)

(In open court - jury present)

THE COURT: You may proceed.

CONTINUED CROSS EXAMINATION

BY MR. ARKIN:

Q Mrs. Switt, when you visited Albuquerque in 1968, you said you were well treated, weren't you?

A Yes.

Q Very well treated?

A Well, as well as anyone would want to be treated, yes.

Q You met your husband there, who had been on a business trip around the country?

A No. I met him in San Francisco and we drove back.

Q Then you drove back from San Francisco to Albuquerque?

A Right.

Q The point is, though, it is fair to say no one abused you or treated you in an offensive manner when you were out in Albuquerque in 1968, is that right?

A No.

Q You read your contract before you signed it and you knew you had a right to get all of your money back in a six month period if you wanted to when you went to Albuquerque?

A That's true.

Q But you didn't, you made a decision to take other lots instead, correct?

A To take what?

Q You did not ask for your money back, instead, you exchanged your lots, the five acres, into ten separate one-half acre lots, didn't you ?

A Yes, I think we had a good salesman.

Q There came a point when you wanted to sell your property, isn't that so?

A Yes, I had to.

Q That was in 1971?

A Yes.

Q You wrote a letter to the company, is that correct?

A Yes.

Q In that letter you said that you were having trouble making your monthly payments?

A Correct.

Q At that time you had sold the Crosswicks School, hadn't you?

A In 1972? Excuse me?

Q Yes.

Had you sold the Crosswicks School?

A What is the date of that letter?

It was not sold yet, no.

Q I show you 158-J (handing).

This is 71, February 3rd.

Q When did you sell the Crosswicks School?

A August of 1972.

Q You said in 1971 you decided to resell the property?

You decided to resell your property in 1971?

A You are talking about Rio Rancho?

Q Rio Rancho, yes, ma'am.

A Yes.

Q What did you do in 1971 in an effort to resell the property, aside from writing to the company?

A In 1971?

I don't recall the date in that newspaper, Albuquerque paper. That's about the only other thing we did in 1971.

Q I show you Exhibit 158-K.

The date on that is June 8, 1975, is it not?

A Yes, so it is much later.

Q You didn't do anything in the interim between 1971 and 1975?

A Yes. We visited out there in 1973.

Q And that is the time when you say that Rio

Rancho recommended that you see Mr. Heinz?

A The salesman.

Q The salesman recommended that you see Mr. Heinz?

A Yes.

Q That is your testimony?

A Right.

MR. ARKIN: Mr. Frezzo, would you mark this for identification.

(Defendants Howard Friedman and Henry Hoffman Exhibit CP was marked for identification)

Q Mrs. Switt, I show you Defendants CP for identification, which is a questionnaire provided me by the government. It is something I received from the government.

A Yes, sir.

Q Are you able to identify the handwriting on this document?

A It's mine.

Q Did you fill this out?

A Yes.

Q Would you kindly read page 3 of this document and see if it refreshes your recollection as to where it was you received the name of Mr. Heinz?

A Referred us to a real estate agency. We did nothing to this referral --

Q Read it to yourself, madam.

A I thought you wanted me to read it --

Q No. I'm sorry, read it to yourself. I didn't make that clear.

(Pause)

A Well, then, it was the second referral.

Q Would you tell his Honor and the ladies and gentlemen of the jury where you got Mr. Heinz' name?

A From the Better Business Bureau.

Q Of Albuquerque, New Mexico?

A Right.

Q And that you did not utilize the recommendation of the salesman from Rio Rancho, am I correct?

A Probably not if I wrote that.

Q Did you go to see Mr. Heinz?

A Yes, I did.

Q Did you discuss with him the listing of your property at Rio Rancho?

A Yes.

Q Did you discuss the price at which it should be listed?

A He suggested --

Q Did you discuss with him? That is a question calling for a yes or no.

A Oh, yes.

Q Did you and he eventually agree upon --

A My husband was there, too.

Q Did you, Mr. Heinz and your husband agree at what price your property should be listed?

A There was not any agreement on that except his suggestion.

Q Was there a decision made?

A Well, we had one decision and he had another. He wouldn't accept our decision.

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Q Did you finally agree to allow him to list your property at a particular price?

A He listed it at the market value.

Q Did you agree to allow him to list your property at that price?

A Yes, because that is what he wanted.

Q Did you pay him $50 in return for his listing the property for you?

A Yes. May I elaborate?

MR. ARKIN: No, ma'am, I will ask questions.

(Defendant Howard Friedman and Henry Hoffman Exhibit CQ marked for identification)

Q I show you Defendants Exhibit CQ for identification and ask if you are able to identify this document.

A Yes.

Q What is this document?

A It's a listing document.

Q Is this the listing document with respect to your property at Rio Rancho?

A Since I don't see my signature on here, may I look at it, please?

Q Yes, ma'am, take as much time as you want or as his Honor will allow you.

(Pause)

A It looks familiar, but I don't think I should warrant the time now to read all this fine print. It looks familiar. Mr. Heinz' signature is there.

Q You can identify Mr. Heinz' signature?

A Yes, I believe that is his signature.

MR. ARKIN: We offer CQ, Mr. Kaufman.

MR. KAUFMAN: Your Honor, it may take me about a minute or two to read this.

THE COURT: All right.

(Pause)

MR. KAUFMAN: Your Honor, I would object. If your Honor wants some discussion on it we should approach the side bar.

THE COURT: Let me see it.

(Pause)

THE COURT: I will see you at the side bar.

(At the side bar)

THE COURT: What is your objection?

MR. KAUFMAN: Your Honor, on Wednesday when Mr. Switt was on the stand defense counsel objected to certain documents that the Switt's received from Heinz Realty on the grounds that it was hearsay and that Mr. Heinz should be called as a witness.

If their objection properly lay with respect to those documents, I think it applies to this document as well.

I would object to it on the same grounds that they successfully objected to the government's offer.

THE COURT: Now maybe they have waived it now.

MR. KAUFMAN: If they would consent to those other documents coming in --

THE COURT: Let's forget that.

MR. ARKIN: The point is we are not offering that document for the truth of it as much as for the fact that it was listed at a particular price -- that she knew it was listed at a particular price. The types of documents which Mr. Kaufman sought to offer were very different in content and substance.

THE COURT: You can get around this by asking her doesn't this refresh her recollection as to what you did without putting it in evidence.

MR. ARKIN: I will be happy to do that, your Honor.

(In open court)

BY MR. ARKIN:

Q Let me show you CO for identification and ask if it refreshes your recollection that you listed your property on July 13, 1974 at a total purchase price of $27,750.

A I don't recall that. I don't recall this form at all really.

THE COURT: We are not asking you about the form. We are merely interested in the price at which this property was listed.

Q Do you recollect about what price the property was listed for in 1974?

A With Mr. Heinz?

Q Yes, ma'am.

A All I can recall him saying, that he wanted to list it for the market value at that time.

Q Do you recall what the market value was at the time?

A 33,000-and some dollars.

Q You are saying you don't recollect that it was listed for say a few thousand less, is that right?

A We asked him to list it for less just to get our money back.

Q For how much less than $33,000, $26,000 less?

A No, we asked him to just get our money back plus our interest and costs.

Q You knew he listed it at market value or close to market value?

A That is what he said.

Q That is what you paid him $50 for?

A We paid him $50.

Q This was Mr. Heinz who was referred to you bythe Better Business Bureau, am I correct?

A It must have been.

Q That is what you wrote before, isn't it?

A That is right. If I signed the paper, I did.

Q When you listed your property, you were not willing to give terms, were you, to somebody who bought it?

A Excuse me?

Q Were you willing when you listed your property to have somebody pay you over seven years, a small down payment and small monthly payments?

A No.

Q You wanted one lump sum, didn't you?

A Yes.

Q That is what you were trying to get at that time?

A Right.

Q With respect to the Prosecution's Exhibit 158-K, the following year you put an advertisement in the Albuquerq Journal attempting to sell your -- in 1975 you put an ad in the paper seeking to sell your property, did you not?

A I cannot answer that yes or no. I would like to elaborate a little bit on that

Q Did you put an ad in the Albuquerque Journal?

A I did put an ad in the Albuquerque Journal.

Q Did you identify 158-K as the ad you put in the Albuquerque Journal?

A Yes.

THE COURT: That is June 8, '75?

MR. ARKIN: Yes, sir.

Q Did you write the ad?

A Yes, sir.

Q The ad was published as you wrote it out to be?

A Not the first itme. There was another ad. It had New York instead of New Jersey as a return address.

Q Was it your words that Rio Rancho Estates, suburb of Albuquerque, were those your words?

A Yes.

Q Of course you consider Rio Rancho Estates to be a suburb of Albuquerque, don't you?

A I do.

Q Then you said you will sell under the market price, is that correct?

A Yes.

Q The market price at that time was $33,000? Is that right?

A Over.

Q It is your testimony here today -- strike that.

Do you recall how much you paid for your property?

A $11,545.

Q Plus about $400 in interest, am I right?

A It could have been a little more interest.

Q About $12,000, thereabouts?

A All right.

Q You said that you were willing to sell under market price in 1975, were you willing to sell for a little bit more than one-third of the market price at that time?

A Yes.

Q All you said was sell under market price, is that right?

A Yes.

Q You didn't say one-half or one-third market price?

A I didn't state that.

Q By the way, Mr. Heinz, who was referred to you by the Better Business Bureau, seemed familiar with Rio Rancho, didn't he?

A Very much so.

Q Do you recall in August of this year, Mrs. Switt, speaking to a man named Paul Mann?

A No.

Q Do you recall speaking to somebody who represented himself as coming from AMREP?

A Pau what?

Q Mann.

A Yes, he was representing some law firm in New York.

Q You spoke to him for a while?

A Not very long.

Q But you did speak to him, didn't you?

A I allowed him to come in to my home. He came without calling for an appointment.

Q But you did speak to him?

A I allowed him to come in.

THE COURT: Did you speak to him?

THE WITNESS: Yes.

Q Did you tell Mr. Mann that you wanted to hurt Rio Rancho and AMREP? Yes or no?

A I am not going to answer yes or no unless you let me elaborate, because that is not --

THE COURT: Wait. The question is put to you as it was put. You can either say yes or no and that is all.

I direct you to answer the question.

THE WITNESS: Me?

THE COURT: Yes.

Did you say yes or no?

A But there was so much conversation before that, sir.

THE COURT: I am sorry, counsel is entitled to ask you whatever questions they wish to ask you and they are entitled to an answer from you.

Now, there is an assistant here who put you on the stand who will ask you other questions, but Mr. Arkin is entitled to an answer to his question. Not what you want to give him, but what he is asking for. That is his right.

MR. KAUFMAN: Your Honor, I believe --

THE COURT: No, you may sit down. Answer

the question.

A Yes, in part of our conversation.

MR. ARKIN: I have no further questions.

THE COURT: Mr. Fleming.

THE WITNESS: Very unfair.

MR. KAUFMAN: Mrs. Switt, can you elaborate on that --

THE COURT: Don't make any comments for the jury to hear. The Rules of Evidence have been here for over two hundred years and they are not subject to your comments.

THE WITNESS: I was talking to myself.

THE COURT: I heard you so the jury must have heard you.

CROSS EXAMINATION

BY MR. FLEMING:

XX

Q My name is Fleming, Mrs. Switt.

When you went to Albuquerque to visit your property, that is the five acres, that your land was approximately ten miles from the property office, did you so testify?

A I would say anywhere from eight to ten miles.

Q You testified that the roads were bad.

A They were just dirt roads, yes.

Q Did you testify that they were bad roads?

A Yes, I did.

Q Did you testify that you reached your property in between 10 and 15 minutes?

Did you so testify?

A I don't remember saying ten. If I did, I guess so.

Q Would you agree that if you reached your property within ten or fifteen minutes and your property was eight to ten miles from the property office your car was traveling between 40 and 60 miles an hour?

A Oh, I don't believe we were traveling that fast.

Q The roads were too bad?

A These were all approximations?

Q As a matter of fact, the roads are dirt, are they not?

A Yes, they are.

Q They are very hard dirt, are they not?

A I think so.

Q They are rather smooth, are they not?

A Fairly smooth, yes, but it's a dirt road. That is what I meant.

Q You didn't want to give the impression that they were rudded, bumpy, impassable roads?

A No, they cannot be rudded there without the rain.

Q You did not want to give that impression, did you?

A No.

Q Did you testify that you purchased the land, the first land the five acres because your husband always wanted to live in the southwest, this is where he wanted to live?

Did you so testify on direct examination?

A Yes.

Q Would it be correct that you purchased the land because you had arthritis, because you kind of had your heart set on to it --

A You are asking me personally what I am thinking? I mean how I felt about it?

Q I am asking you if the purchase -- if what you testified on your direct examination that you and your husband purchased the five acres of Rio Rancho because your husband always wanted to live in the southwest, this is where he wanted to live. Am I correct?

A Correct.

Q You did so testify?

A Yes.

Q My question is:

In fact, did you not purchase the land in Rio Rancho, the five acres, because you had arthritis and because you had your heart set on to it?

A I didn't have my heart set on it. I had arthritis. There were several reasons why we wanted to live in the southwest.

Q Did you talk to your husband between today and Wednesday?

A Yes.

Q Did you talk to him in the last four days?

A Yes, we live together.

Q Did you talk to him about his testimony on Wednesday?

A Why certainly.

Q Did he tell you that he had testified?

A Yes.

Q On his oath that you had purchased the land in Rio Rancho because you had arthritis and you kind of had your heart set on it? Did he tell you that?

A No.

end 13

Q Now, there came a time in the 1950's when your family, your husband and yourself, sold approximately 116 acres of land, farm land in Flemington, New Jersey, is that correct?

A No, we did not sell it.

Q Is it not a fact that that land was sold for $168,000 in 1955?

A Yes, the owner of the land sold it. We owned it up until there was a bankruptcy. My husband went into bankruptcy which is one thing he probably failed to tell you that in his testimony.

Q He failed to tell us that.

A Yes, he realized his error.

Q Let's go through it. 60 acres of that land had been purchased by your father-in-law in 1918, is that correct?

A By my father-in-law?

Q By your husband's father.

A Oh, 1918, I wouldn't know. I don't know the whole story of that.

Q And in 1941 or thereabouts your husband purchased an additional 67 acres, is that correct?

A Yes.

Q And he paid $73,500 for those additional 67 acres?

A Correct.

Q And in 1955, the entire 117 acres was sold for $168,000, is that correct?

A No.

Q What was it sold for?

A One parcel belonged to his mother so how could that have been sold together.

Q I have no idea. I am asking you the question.

A Well, part of that -- we had 60 some acres on that farm and due to illness and not being able to run his farm --

Q My question is was the 117 acres sold in 1955 for $168,000?

A There wasn't.

Q Were the 67 acres purchased by your husband in the 1940's sold in 1955?

A Yes.

Q For what amount of money were those 67 acres sold?

A I really don't know because they didn't belong to us.

Q You really don't know, is that correct?

A No.

Q You say they had been taken from you in bankruptcy, is that correct?

A Absolutely. Not from me, from my husband. He went through bankruptcy.

Q It is your testimony on your oath --

A Yes, sir.

Q -- that the land having been taken from your husband in bankruptcy, you paid no attention to what the land was sold for by the person who had taken it?

A That's right. I had enough to do at that time.

Q Am I correct that you would be entitled to any amount received by the seller above and beyond what you owed the seller?

A No.

Q Is it your testimony, Mrs. Switt, that if you owe someone $100,000 and they take your land and sell it for $168,000, you are not entitled to the additional $68,000?

MR. KAUFMAN: Objection.

THE COURT: Wait. That question is improper against the background of bankruptcy.

MR. FLEMING: Thankfully I have never been in it, your Honor.

Q By the way, what interest are you receiving on the mortgage on the school? Are you the mortgagee on the school?

A Yes.

Q What interest are you charging on the school?

A 7.5 per cent.

Q $150,000?

A There is not $150,000 balance any more.

Q The school was sold in 1972, did you so testify?

A Yes.

Q At the beginning at least you were receiving 7.5 per cent plus amortization?

A Correct.

Q What were you receiving yearly on the mortgage?

A It has varied. IT has changed since the beginning. The first three years it was less than it is now.

Q You are receiving more now than you did in the first three years?

A That's right.

Q Is it a floating interest rate?

A No, it's the same interest rate, but the amortization sheet was set up that way. There is two mortgages. There's one for the business and one for the property.

Q How much did you receive last year on the mortgage?

A Last year is when we got the change. Let's say half of the year about 2,000 a month.

Q 2,000 a month?

A Yes, half of the year and previous to that about 1600.

Q A month?

A Yes.

Q Was it during that period of time that you were running around trying to borrow money to pay for your Rio Rancho property?

A Last year? Rio Rancho was paid for last year.

Q How about the year before? When you were running around trying to borrow money to make your payment on Rio Rancho, how much were you earning off the mortgage on the school?

A We didn't have a mortgage then. When was that letter written? We were still working in the school.

Q I wasn't referring to a letter. Did you testify that you had to run around to make payments on the Rio Rancho property? Did you so testify?

A I didn't run around. I went to the bank and borrowed money to make the payments paying interest twice.

Q When was that?

A Anywheres from the time my husband was operated on until he was able to start working again.

Q Between the time of the operation and the time of selling the school?

A Yes, it was a hardship.

Q It was on two occasions?

A Excuse me?

Q Was it on two occasions?

A No, it was that whole period there.

Q Every month?

A Yes, about three years of it.

Q Have you sold three houses in the past four years?

A Yes.

Q Now, the first house -- directing your attention to the first house you sold --

A Wait a minute, three houses. No, two houses. The first property was the school property.

MR. KAUFMAN: Objection, your Honor.

THE COURT: Overruled.

A We lived on the property.

Q That was sold for $50,000 in cash and $150,000 mortgage at 7.5 per cent a year, is that correct?

A Correct.

Q What was the next property, where did you move to then?

A The condominium.

Q You paid $31,000 for that?

A About 32.

Q You lived there for how long?

A A year and a half.

Q And sold that for 41?

A With all the interior decorating that I did.

Q You sold it for 41?

A Yes, I just returned my money.

Q Did you report a capital gain on that?

A No, didn't make any.

Q Then where did you move from the condominium?

A We bought a house in Browns Mills, New Jersey.

Q How much did you pay for that house?

A 38, 5.

Q Was that house in a development?

A It's not in a development.

Q How long --

A I mean it's not a condominium, if that's what you mean.

Q How many acres?

A No acres, a half acre, a little better than a half acre.

Q Is it on what was formerly farm land?

A No, there is all cranberry bogs down there.

Q They have been developed?

A Some.

Q Houses put on them?

A Yes.

Q How long did you own the house that you purchased for $38,500?

A Two years.

Q What did you sell that for?

A 42, 5.

Q Did you make a lot of improvements in that before you sold it?

A Yes, we certainly did.

Q Now -- did that house have any property, any acreage?

A No.

Q It did not have two or three acres of land?

A No.

Q Now you are living in an apartment?

A Yes, sir.

Q Does your husband own any horses?

A Not now.

Q He did own trotters?

A Years ago.

Q He owned trotter horses, racing horses?

A Yes.

Q He now works as a judge?

A At Liberty Bell.

Q That's a trotting track?

A Yes, it is.

Q What is his salary as a judge?

A About $30 a night.

Q That's his only employment?

A That's the only employment. About five or six months out of the year.

MR. FLEMING: I have nothing further, your Honor.

THE COURT: Redirect.

XXX REDIRECT EXAMINATION

BY MR. KAUFMAN:

Q Mrs. Switt, I remember just a few minutes ago Mr. Arkin asking you about a conversation you had with a Paul Mann?

A Yes.

Q Mr. Arkin asked you whether or not you said words to the effect that you wanted to hurt Rio Rancho and asked if you would answer that question yes or no.

A I remember.

Q I believe you said you wanted to elaborate on that.

A I would like to.

Q Can you do that now, please?

A Yes. The office of the apartment complex secretary called and said there was a gentleman there that would like to see me and she mentioned the name of the firm he was representing and I didn't recall any such name, but I said he could come to the door and I would talk to him.

When he came to the door, he told me the names of the attorneys and that it had something to do with Rio Rancho and could he talk to me for a few minutes.

I said yes, sure, come on in.

I told him right away, I really had nothing that I wanted to discuss with him except if he could see that we could sell our property, we would be very happy to settle right then and there and nothing further as far as any lawsuits or anything to try to get our money.

He said would you testify against Rio Rancho. I said, why certainly.

I said they have hurt us very much. I said we came to them to try to sell our property and get our money back when we needed it so badly, they wouldn't help us.

They hurt us very much.

So why wouldn't I hurt them? That's the way it ended.

Q By that, you were referring to testifying here, is that right?

A Referring to testimony here to hurt them?

Q To testifying at the trial.

A Yes, by coming and testifying against them and telling the truth.

Q Mr. Arkin also asked you about listing your land with Mr. Heinz and whether or not -- and at what price you listed it with Mr. Heinz. Do you recall Mr. Arkin asking you those questions?

A Yes, I do.

Q I believe when he asked you those questions you said you wanted to elaborate on the price that the land was listed at with Mr. Heinz, do you recall that?

A Yes, we tried to tell Mr. Heinz to please --

MR. ARKIN: If your Honor please, there is no question calling for such a response.

THE COURT: Not yet.

Q Could you elaborate, please?

A Yes. To please sell the land and at least try to get us our money back and he would make some money.

If he wanted to list it at a higher price, he could go ahead and do it, but we were interested in just getting our money back if that were a possibility so he had plenty of room to go.

Q By the way, when you referred to market price, are you referring to the price that Rio Rancho quoted you?

A Yes, and he also quoted it.

Q I gather that during the year that your property was listed with Mr. Heinz he was unable to sell it?

A Yes, because I contacted him again and I also asked his advice to advertise and he said I would be -- okay.

MR. KAUFMAN: I have no further questions.

THE COURT: You may step down.

(Witness excused.)

THE COURT: We will adjourn for lunch. Return at 2:00.

(Luncheon recess.)

AFTERNOON SESSION

2:00 p.m.

(In open court; jury present.)

MR. FLEMING: Your Honor, may we approach the bench for just a moment?

THE COURT: Yes.

(At the side bar.)

MR. FLEMING: Your Honor, based upon the Jenks Act material which we have received, we have reason to believe that the government's next witnesses will be one or two or three girls who worked in Albuquerque at Rio Rancho, from all that we can perceive from the Jenks Act material, with no contact with any of the defendants, individual defendants on what is called the OPC program, a meaning which I don't entirely know, but I do understand it had to do with the sale of property on site as opposed to the sale of --

THE COURT: OPC was where the people went to Albuquerque, they gave out flyers and told them to come out to Rio Rancho.

MR. FLEMING: That's correct, your Honor.

MR. ARKIN: It is known as either outside public contact or on-site property consultant, depending upon who you talk to.

MR. FLEMING: We have read the indictment again, and the only thing we see alleged in the indictment is a scheme to defraud having to do with the sale of property to people outside of New Mexico at dinners or through home visits before they ever saw the property, and we see no reference in the indictment as a part of the scheme on this OPC program or this on-site sales at all.

THE COURT: I don't think it makes any difference. I think the indictment is broad enough to bring in testimony as to what the course of conduct was here.

MR. FLEMING: Yes. Our distinction --

THE COURT: It doesn't have to be merely material which is received at dinners or some salesman coming to your home.

MR. FLEMING: That was our distinction, the course of conduct with regard to sales prior to visit but not a course of conduct having to do with on-site sales.

THE COURT: No. I can have an on-site program which is part of the whole picture.

MR. FLEMING: I agree, your Honor, except it is not alleged and it is on that basis --

THE COURT: I think it is completely covered -- not completely covered, but I think the indictment is broad enough to bring that in.

(In open court.)

MR. KAUFMAN: The government calls Linda Davis.

XXX LINDA DAVIS, called as a witness by the government, having first been duly sworn, testified as follows:

XXX DIRECT EXAMINATION

BY MR. KAUFMAN:

Q Mrs. Davis, where do you live?

A I live at 521 Siandia Road Northwest in Albuquerque, New Mexico.

Q And how long have you lived in Albuquerque?

A About nine years.

Q Do you recall when you moved to Albuquerque?

A In July of 1968.

Q What is your educational background?

A I have about a year and a half of college.

Q Do you have a family?

A Yes. I have a husband and two young daughters.

Q Did you ever work for Rio Rancho Estates?

A Yes, sir, I did.

Q And when did you start working for Rio Rancho?

A I started working for Rio Rancho in January of 1969.

Q At what job?

A I was hired -- I applied for a job as a secretary. I was hired as a tour guide.

Q And how did you get that job?

A Through a mutual acquaintance of ours, who at that time had just started working for Rio Rancho. He informed me that they needed employees and I was looking for a job, so I applied at that time to Mr. Philco, who was the assistant vice president, I believe, and general manager, and he, in turn, introduced me to Mr. Jim Wall, who was at that time the tour director, and I was hired.

Q Did you begin work as a tour guide right away?

A Within the week.

Q Did you receive any training for that job?

A I received on-the-job type of training whereby I went out with another man who was a tour guide and another girl and just observed for a couple of tours.

Q And how long were you a tour guide?

A About eight months.

Q What did your job as a tour guide consist of, in general terms?

A We met the groups of people that came from all over at the airport and we were to stay with them and be a hostess and give them a tour of Albuquerque and answer questions and be of any assistance we could with their rooms, their reservations or whatever during their stay.

Q And who were these people who were on the tours?

A They were people who came from all over the U.S.

Q Were they people who owned land at Rio Rancho Estates?

A Yes, sir.

Q wnd how long were these tours?

A Generally they lasted three or four days, four days being if they came from a further distance, such as New York City they were four days long.

Q And how were the people on the tour transported around?

A By bus. We had a chartered bus.

Q And I gather you rode on the bus with thepeople on the tour, is that right?

A Yes, I did.

Q And, again, in general terms, what was your job while you were on the bus with the people on the tour?

A To present to them a picture of Albuquerque and the surrounding area and, like I said, to answer questions.

We gave them just mostly a tour of the city and we were to stay with them at all times, answer any questions they might have and, generally, that's about it.

Q Who was your immediate superior when you were a tour guide?

A Mr. Jim Wall was my boss. He was the tour director at the time.

Q What happened when the tours arrived at the airport in Albuquerque?

A Usually Mr. Wall, myself or whoever the other tour guide might be on the tour met the people at the airport. There was usually a representative from the Chamber of Commerce that met us there, also.

The people were sort of taken to one little area of the airport after they had gotten off the plane and they were given a welcoming speech to Albuquerque, and at that time a member of the Chamber of Commerce presented them the red carpet as a welcoming red carpet to Albuquerque.

We were then -- we told them we would depart for the downstairs area where they could get their luggage and the luggage would be put on the bus.

For instance, myself, I would say, "I'm going to be your hostess, your guide for the next few days. When we get you on the bus we will tell you what we are going to do for the duration of your stay."

At that point we proceeded on to take them downstairs, where the porters loaded their luggage on the bus and we got people seated on the bus, and at that time we passed out a little tour packet to them which had information about Rio Rancho Estates, brochures and stuff from Albuquerque, from New Mexico and inside of it a tour schedule which was giving them an idea of the things that we were going to be doing for the next few days.

Q And where did the people on these tours stay when they were in Albuquerque?

A While I was a tour guide, they stayed at three different motels. They stayed at the Panorama Inn, which was at Rio Rancho; the Downtowner Motor Inn, which was located in downtown Albuquerque; and the Desert Inn, which was also located in downtown Albuquerque.

(Continued on next page.)

Q How was it determined at which hotel or motel the tour people would stay at?

A Well, a lot of times this would depend on the availability of the hotel.

Most weekends there were several different groups from different parts of the United States and they would stay at different places depending on the room they had to accommodate them, plus some of the particular representatives or brokers from various areas wished them to stay at either one place or the other.

Q Do you recall which brokers expressed a preference?

A Yes. Mr. Peter Miller, when I first started working for Rio Rancho, wished that his tours stay at the Panorama Inn. Later on he did not wish that they stay there.

Mr. Glen Solomon of the Chicago office always insisted that his tours stay at the Downtowner.

Q Did either of them express a reason for their preference?

MR. FLEMING: Objection.

THE COURT: Sustained.

Q Did either Mr. Solomon or Mr. Miller say to you why they preferred the people staying at one motel or the other?

A Yes, sir.

MR. FLEMING: Same objection.

THE COURT: Wait. Strike the answer.

Wait, don't answer when somebody gets up to object.

Objection sustained.

Q In what part of Albuquerque is the airport?

A It's in the southeast part of the city.

Q And where is Rio Rancho in relation to the city of Albuquerque?

A Northwest of the city.

Q And is that west of the Rio Grande River?

A Yes.

Q And was there a usual route that the buses took when they went from the airport to the Panorama Inn when the tours were staying at the Panorama Inn?

A Yes, sir.

Q And what was that route?

A We usually took --

Q May I interrupt you for one second.

MR. KAUFMAN: May they be marked 1402.

(Government Exhibit 1402 marked for identification)

x

Q Mrs. Davis, I show you what has been marked as Government Exhibit 1402 for identification, and ask if you can identify this (handing).

A Yes. That's a map of the greater Albuquerque area.

Q A road map?

A Yes; street map.

Q And this includes both sides of the map, is that correct?

A No. This particular side of the map is the west mesa area, which is Paradise Hills and Rio Rancho and west of the river.

Q Is this a section that is somewhat near Albuquerque?

A Yes.

MR. KAUFMAN: The government offers 1402, your Honor.

(Government Exhibit 1402 received in evidence)

xxx

Q Mrs. Davis, what I will ask you to do is orally tell us what route, what the usual route was for the bus going from the airport to the Panorama Inn, and once you tell us orally I will ask you with this blue pen to designate on the map where that route is.

A All right.

THE COURT: Why don't you just designate it?

Q Can you?

A Yes, I will try.

Okay. This is the southeast area. This is the airport right here (indicating).

Now, I have to get my bearings.

We traveled along Gibson Boulevard --

THE COURT: Wait, wait.

Just put it down, don't tell us what you are doing. Use the pen or whatever you were furnished by Mr. Kaufman and draw the route.

(Witness complies with this request)

Q Does this map go up as far as Rio Rancho Estates?

A Not quite, because Rio Rancho begins on the other side of this county line right here (indicating).

Q This map goes to the boundary line between Bernalillo County and Alamedo County?

A Right.

Q And Rio Rancho starts right at that county line, right?

A Right.

MR. KAUFMAN: If I may just show this to the jury, your Honor.

THE COURT: I think we need more than that to show it to the jury. It is meaningless to show it to the jury now.

You must have had it done for a purpose. Let us find out what the purpose is so the jury understands what the route means.

It is meaningless just to say we went down East Side Drive.

Q Did you receive any instructions as to which route to take in going from the airport to the Panorama Inn?

A Yes, we did.

Q And from whom did you receive the instructions?

A The property manager, whom at that time was Mr. Bob Berg.

Q And what did he say in connection with giving you those instructions?

A That we were to take them through the pretty part of the city, which was Rio Grande Boulevard, which was a little bit longer route mile-wise and probably in time, but it was more heavily populated, it was a long river route, which you could see the farms and the ranches.

Q On which side of the Rio Grande River was this road?

A East.

Q Was there ever any occasion in the early part of your employment where another route was taken from the airport to the Panorama Inn?

A Yes. When I first started working there.

Q What route was that?

A We were staying at the Desert Inn Motel and we were late getting away one morning, so we -- rather than coming through the Rio Grande Valley basin area, we took the freeway up to Coors Boulevard, which is on the west side of the river and proceeded out to Rio Rancho.

Q Most of the trip was on the west side of the Rio Grande River, is that right?

A At that time, yes.

Q And did Bob Berg ever say anything with respect to using that route to get to Rio Rancho Estates?

A Yes, he did.

Q What did he say?

A That we were not to take that route ever again.

Q Did he give any reason why?

A Partly because he felt that people coming from a heavy populated area, other parts of the city, of a large major city, that you saw an awful lot of vacant and barren land enroute to Rio Rancho. That was the reason he gave us at that time. That made the distance seem longer.

Q Using this red pen, can you just designate on this map where that route was that took you up to Rio Rancho on the west side of the Rio Grande River?

A I will try.

(Witness complies with this request)

We took -- there are two different ways to obtain the access to Coors. Do you want me to mark them both?

Q Is it a major difference in the route?

A Not a whole lot, except we would sometimes get on the freeway at this point and it saved a little bit of time.

Q The freeway up here (indicating)?

A We would go out this way (indicating).

Q Could you briefly tell us what occurred on these tours after the people were taken to their motel?

A Yes.

The flights, as a rule, got [illegible] around 3:55, three-something in the afternoon, so by the time they actually got them on the bus and to the motel it was pretty late for the remainder of that day. I would say usually we got to the motel about 5:00 or 5:30.

They were given free time to freshen themselves and have a little rest period before dinnertime.

We met back in the lobby of the hotel as a group and we took them usually out to dinner on the first night. We told them that we would meet them back in the lobby of the hotel, say, for instance, at 7:30, and we took them out to the motel, the tour guide staying with the tour.

We usually passed out little free cocktail tickets that they presented to the club or wherever it was that we were going, and we stayed through dinner and usually we went to somewhere where they could dance and have drinks and we stayed there until about 11:00 o'clock at night. At that time we brought them back to their hotel.

Q And the next day?

A The next day we met them at a designated hour at the hotel for breakfast.

Q About what time was that?

A About 7:30 or 8:00 o'clock and we ate again together as a group. We left right after breakfast and we took a city tour and that took in all the downtown area, the park and we went out to where zoo was, the university area, the northeast heights, Fort Hills, the country club area, Ridgecrest Drive. We usually finished that around noontime and got back to the Old Town area, which is the old plaza in Albuquerque, if anyone is familiar with it, and we had lunch there.

We usually tried to stay there about two hours or two and a half hours and they were given time to go shopping in all of the shops.

We met back on the bus say at 1:30 or 2:00 o'clock and at that time we went to Rio Rancho. We took a tour of the industrial area. They were taken into the model homes and to the housing area. That usually took about two and a half hours.

By that time it was usually around 4:00, 4:30 and they were taken again back to their motel, free time until dinner. We met them again for dinner that evening.

Q During this first day or two of the tour, where did the tour guides meet with the tour director and the broker from the city from which the tour came?

A I beg your pardon, did they meet?

Q Yes, I am sorry, withdrawn.

During the first day or two of the tour, would you meet with the people who were in charge of that particular tour?

A Yes.

Q What would be discussed at those meetings?

A Usually the broker wanted to know if everything seemed to be going smoothly on the tour. He would ask if there seemed to be any problems. If everyone was having a nice time, everyone was happy, and most of the tours the broker, on many of the tours accompanied the tour guides and went on the buses themselves.

In instances where they didn't, there was usually a representative from each of the offices that always accompanied the tour girls on the bus and always accompanied the people.

Q Were most of the people on the tours people within their six month cancellation period?

A Most of them, yes.

Q Were there people on the tours who were not within the six month cancellation privilege?

A Occasionally.

Q Do you recall having a conversation with any of the brokers concerning homesite owners who were not within their cancellation period?

A Yes, I do.

MR. ARKIN: Can we fix a time and place?

THE COURT: Yes.

Q Do you recall with whom you had a conversation?

A Yes, I do.

Q Who was that?

A Mr. Peter Miller.

Q About when was that?

A In terms of my employment with the company?

Q Yes.

A I don't know, probably after I had worked there four or five months.

Q That would be sometime in 1969?

A Yes, I handled most of the New York tours. We had a gentleman on our tour that was really very nasty and was giving us a very hard time and I mentioned to him that he was just really being very obnoxious. There was nothing that we could do to make him happy or pleased. He made everybody else on the tour very miserable, he was always late and he was just a real pain and a real problem.

At that point Mr. Miller said to me, well, don't worry about him. He is out of cancellation.

Q Did other brokers express similar sentiments to you about people who were not in their cancellation privilege period?

MR. FLEMING: Objection.

MR. ARKIN: Objection, your Honor.

THE COURT: Sustained.

Q Did you have similar type conversations with other brokers?

A Yes, I did.

MR. FLEMING: Same objection.

THE COURT: Same ruling. Strike the answer.

Q What happened on the next morning, I guess that would be Saturday morning of the four-day tour?

A The day after the city tour was always property day or the day that they went to the property office.

Usually all the New York tours there were two -- they were large groups and there were always two buses, but we always went together as a group to the property office the first thing after breakfast that morning.

We always gathered out in front of the property office building where everyone had their picture taken as a gruop and later on these pictures were distributed to the homesite owners, to the property owners.

We went inside of the building and we all went upstairs which was sort of an alcove or waiting room. There were seats and there was a bulletin board and blackboard and usually the property manager would give a speech and the people would sit there until they had gone out with their individual sales personnel to see their property.

Q Did you attend these speeches made by the property manager?

A Yes, I did.

Q Who was the property manager during the time that you attended these presentations?

A There were two, Mr. Bob Berg was the property manager when I started work at Rio Rancho and the other gentleman was Mr. Don Potter.

Q Do you recall what was said at those presentations?

A Yes, I do.

Q Would you please tell us?

A The people were seated down in a group and again the property manager made very light conversation at first and talked to them and welcomed them to Rio Rancho and to Albuquerque area and asked if they were having a good time. He hoped everyone was.

That they would be going very soon out to see their property. He then gave a talk about Rio Rancho, including the growth of Rio Rancho and he had maps that he referred to as this is the area 16, Unit 16 where the housing -- where the housing was being built in that area now and then he showed -- it showed other various parts of the property.

He made mention then of the fact that the land was nearly sold and that there would be a resale program in the Rio Rancho area very soon.

Also people were told, he made -- there was a chart and there was another map which was the Albuquerque area and showed where Rio Rancho was located and showing the Indian land that was owned to the north of the city and the mountains to the east of us and then he gave another talk about what the return would be on their investment and what the land had sold for originally.

Q With respect to Albuquerque, was anything said with respect to its growth?

A Albuquerque, at that time was said to be one of the fastest growing cities in the United States.

Q Was anything said with respect to the irection that it was growing?

A Yes, there was.

Q What was said?

A That the only direction that Albuquerque could grow was to the northwest, which was right at Rio Rancho.

Q Was that something that you as a tour guide also said during the time that the people were being taken around on the buses?

A Yes, it was mentioned at the airport and when we were first there when we talked about what quadron on the city we were in.

One of the reasons it was said at that particular point is the Albuquerque Airport sits on a very high plateau and from that point you can see a pretty big area of the city and we made note at that point that it was broken up into four quadrants and at that time we were in the southeast quadrant and they could see the Rio Grande Valley basic and of course the view of the mountains so there was mention made of it at that point.

Could I say something else?

THE COURT: You had better wait until he asks you. He may not want to hear what you are going to say.

THE WITNESS: Thank you.

Q Mrs. Davis, what you want to say, is this in reference to an answer you have already given?

A What we were just talking about.

Q Yes, continue.

A We also made mention of the fact that the growth of the city and in the city tour in pointing out all the city boundary lines over the last ten to twenty years.

Q With respect to these matters that you told the people while you were on the bus, were these matters that you yourself thought up to say or did you receive this language from some other source?

A Well, when I first started working for Rio Rancho I had only been in town about a month or a monthand a half. Excuse me, I had moved to Albuquerque in July and I had only lived there about six months when I went to work for Rio Rancho so a lot of -- all of the information and a lot of it I dug up on my own in research as far as the history of New Mexico and the state.

We were given tour outlines pretty much verbatim to follow.

Q These were outlines that you were supposed to either read or memorize?

A Yes.

Q You also said that one of the other things the property manager stated at the presentation was return on investment.

Can you elaborate on that a bit more?

A They had a chart on the board which gave the return on an investment, say, a savings account. At that time it was paying, what, maybe four and a half percent return on your money.

Another instance he gave, if you invest your money in the stock market, the stock market is not a sure thing. You never know from one day to the next where your money is going, but land was one of the few things that you could depend on, it was going to be here forever.

Q Was anything said at that presentation with respect to the history of the prices at Rio Rancho?

A Yes. He made mention that when he first started with the company that they had worked out of a back end of a pickup truck and that there was a dirt road up there and the property was selling for a few hundred dollars at that time and what it had gone up to within the last ten years up to what -- it had gone up in three months and there was going to be another price hike in the next three months. I don't remember the figures.

Q After the presentation, were the people then taken to see their property?

A Yes. They were taken individually.

Q Would you go with the people out to see their property?

A No.

Q Who, if anybody, accompanied them out to see their property?

A A salesman.

Q You say you were a tour guide for about eight or nine months, is that correct?

A Yes.

Q What happened after eight or nine months?

A I went to work in the office for a while as a secretary and I then became -- I was given a promotion as a tour supervisor. That meaning I did all the handling of the tours as far as making all the reservations at all the motels, setting out the tour schedule and scheduling their dinner reservations, the reservations for the tram.

I hired the tour guides and saw that everything actually was running smoothly on the tours and did all the corresponding with the brokers as far as how many people to plan for.

Q How long were you tour supervisor in the office?

A Until around, I guess around six or eight months, I don't remember, until I left there, which was in 1970, the end of 1970, early '71.

Q Did you ever own any land at Rio Rancho Estates?

A No.

MR. KAUFMAN: I have no further questions, your Honor.

THE COURT: Mr. Fleming.

CROSS EXAMINATION

BY MR. FLEMING:

Q When did you leave AMREP's employment?

A In late of 1970 or early 1971. I am not sure of the exact date.

Q You still live in Albuquerque?

A Yes, I do.

Q In the northwest side of Albuquerque?

A Yes, I do.

Q I take it you like it?

A I do.

Q You testified that in that period of time when you were a tour guide you did make certain statements to the people on the bus or people in the groups, is that correct? You did say certain things to them.

A Meaning what, sir?

Q Just --

A I said things, yes.

Q You testified about being at the airport and you said the airport was at a high point of the area and you could look down on the city.

A Pretty much so. You could see the Rio Grande Valley and the River.

Q Not talking about the motel, did you get the panorama view of the city and the land, is that correct?

A Yes.

Q You testified that you spoke from time to time about the city and about the old city limits and the new city limits and about the mountains, et cetera, is that correct?

A Yes, we did.

Q Did you testify after you were hired you went out and you dug up a lot of information on your own about Albuquerque, did some research on your own?

A Not about Albuquerque itself. It was more about New Mexico. I became very interested in the culture of the state. This seemed to be things people asked questions about and I was also interested in it.

Q In New Mexico generally?

A Right.

Q Did the company give you materials to study preparing you to be a tour guide?

A Only the tour outline.

Q Did they give you any information from the Chamber of Commerce?

A Some.

Q Did they give you information from the University of New Mexico or prepared by people at the University of New Mexico?

A I do not recall that.

Q Did anyone ever tell you to tell lies to anyone, to any of the guests?

A No.

Q Did anyone ever tell you to tell half truths or color the truth or make misrepresentations to the guests?

A No one ever told me that.

Q Were the people that came out, that is the tours that came out, the members of the tours that came out, can you generalize, did they have a good time or a bad time on their trips generally?

A I would say generally everyone had a pretty nice time.

Q Did you, in fact, from time to time receive letters from couples or individuals who had been on the tour thanking you and telling you what a good time they had had?

A Thanking me personally, yes, I did, sir.

Q And telling you that they had enjoyed their trip to Albuquerque?

A Yes.

Q By the way, you say there is one time you slipped up and went out to Rio Rancho on Coors Boulevard, is that right, that happened once?

A It might have even happened more. This is one time I recall because we got in trouble for it, yes.

Q On that one time, do you recall, did everybody on the tour cancel their property?

A I don't remember.

Q Well, what is your best recollection?

A I couldn't even tell you which tour it was. We are talking about what, eight years ago. I don't know.

Q Can you recall anybody on the bus saying my, what barren land?

A Yes.

Q You do recall that?

A Yes, I recall that they asked -- a lot of people asked who it belonged to.

Q You would talk to them about it?

A Yes. To my very best knowledge, I did.

Q Answered their questions?

A I answered their questions.

Q And you told them the truth?

A I told them the truth.

Q You don't know whether they cancelled or not?

A No, I don't remember.

Q Did anyone tell you while they were driving up Coors Boulevard that they were going to cancel?

A No.

Q By the way, while you were a tour guide, were people coming in to Albuquerque that is, your purchasers coming in to Albuquerque to look at their property, coming in by themselves and not on a tour?

A Did they?

Q While you were operating as a tour guide, were home site owners arriving at Albuquerque individually and not on a tour?

A Yes.

Q Were they coming up to Rio Rancho any way they wanted so far as you know?

A By any means they wanted, as far as I knew, yes.

Q Either east of the Rio Grande or west of the Rio Grande?

A That's right.

Q Are there some particularly -- on this trip east of the Rio Grande, are there somewhat like you call land site homes in that area?

A There are two other land development companies within that area.

Q Are there some old and lovely homes in that area from Albuquerque?

A You are talking about on Coors Boulevard again?

A No, not on Coors Boulevard, the one you say you usually took.

THE COURT: From the airport.

A Yes, there are lot of lovely homes.

Q By the way, you say you had this nasty man on a trip?

A Yes.

Q Peter Miller told you not to worry because he was beyond his cancellation period?

A Is that all he said?

Q I say, did you testify that Mr. Miller told you, don't worry about that man because he is beyond his cancellation period?

A Yes.

Q Mr. Miller didn't tell you to lock him in his room, did he?

A No.

MR. FLEMING: That's all.

CROSS EXAMINATION

BY MR. ARKIN:

Q Mrs. Davis, how long have you lived in the northwest?

A How long have I lived in the northwest? Ever since I moved to Albuquerque.

Q About nine years?

A Nine years.

Q How close is your home to Rio Rancho?

A By miles?

Q Yes, if you know.

A I would say maybe four.

Q Going south?

A I live right near the river. Very close to Rio Grande Boulevard.

Q Rio Grande Boulevard is very close to the river, is it not?

A Very close.

Q Just a few hundred yards, isn't it?

A Well, at some points, yes, it widens out and around by the river.

Q It kind of follows the river?

A Right.

Q How far would you say Coors Boulevard is from the river?

A Again, at some points you can see the river from Coors Boulevard. I don't know, maybe half a mile.

Q In reality, Coors Boulevard isn't very far from Rio Grande Boulevard, is it?

A No.

Q It is pretty close?

A If you were to take it across by miles, yes, it is.

Q They both go in the same direction?

A Yes, they do.

Q Since you live in the northwest, I take it you have seen a lot of development along Coors Road, haven't you?

A Yes.

Q Have you seen shopping centers?

A Yes.

Q New high school?

A I saw a new high school.

Q Roads broadened to four lanes from two lanes?

A At Coors?

Q Yes.

A Yes.

Q New housing developments?

A Yes.

Q Restaurants?

A I don't know about the restaurants. I could not answer that honestly.

Q How about gas stations?

A I don't know about that either. I don't travel out that way too often.

Q Nonetheless, it has changed a great deal in the last nine years, hasn't it?

A Yes, it has, sir.

Q A lot more construction and development?

A Yes, it has.

Q Would that be correct?

A Yes, it has.

Q Now, you said that when you met the airplanes at the airport that a representative of the Chamber of Commerce would join your contingent, is that right?

A Yes.

Q That was some businessman from Albuquerque?

A Mr. Wainridge, I don't know what his function was, I am sure he was a businessman from Albuquerque. Later on he worked for the company of Rio Rancho.

Q There were different people in the Chamber of Commerce from time to time, were there not?

A Yes, later on in the tour I presented the red carpet myself so I don't know, there was different ones at different times.

Q People from the Chamber of Commerce?

A Yes. He was a member.

Q Who were invited to come out by Rio Rancho and meet their HSO's that were coming in by airplane, isn't that right?

A Yes.

Q These people were present during the time when the growth of Albuquerque was spoken about to the HSO's, isn't that right?

A These people were present.

Q Yes, when the speeches were made?

A No, no, now they weren't. The only speech that was made at the airport was just a welcoming speech.

Q Didn't you say at the airport people were told a bit about Albuquerque and how it lay?

A On the bus and the Chamber of Commerce member was not there then.

Q That was not while the Chamber of Commerce person was present?

A No.

Q With respect to the description of Albuquerque itself, did you during the tours give a description of it?

A Did I give a description of Albuquerque?

Q Yes.

A Yes.

Q You also were with the HSO's when they saw the northeast, when they saw downtown Albuquerque, when they saw west Albuquerque and in fact all of Albuquerque, isn't that so?

A I was with them, yes,sir.

Q Did you, yourself, ever say anything about Albuquerque which you did not believe to be true?

A About Albuquerque, no. sir, I didn't.

Q Just one other question.

With respect to people who cancelled or determined they wanted to cancel their property, they were not treated any differently than people who were determined to keep their property, isn't that so?

A That is so.

MR. ARKIN: I have no other questions.

THE COURT: Redirect.

XXX REDIRECT EXAMINATION

BY MR. KAUFMAN:

Q Mrs. Davis, you were just asked by both Mr. Fleming and Mr. Arkin whether or not you live in the northwest part of Albuquerque, is that correct?

A Yes, I do.

Q On what side of the river do you live?

A On the east side.

Q Do you know what the boundaries are in Albuquerque of the four quadrants, northwest, southwest and so on?

A Yes, I do.

MR. FLEMING: Object on the grounds of relevance.

THE COURT: Sustained.

Q You recall Mr. Arkin asking you whether or not you said anything that you didn't believe to be true and you said that you did not say anything that you did not believe to be true, is that correct?

A To the best of my knowledge, I did not say anything I did not believe to be true.

Q How long had you been in Albuquerque at the time you were a tour guide?

A Six months. From July to January.

Q You have now been there about nine or ten years, is that right?

A Yes, I have.

Q In the nine or ten years that you have been in Albuquerque, can you now state from your own observation where most of the growth of Albuquerque has gone in terms of direction?

A Yes.

MR. ARKIN: Objection.

THE COURT: Sustained.

Q Have you seen new houses and new schools and new roads in different sections of Albuquerque?

A Yes, I have.

Q In what sections have you seen such development?

A I would say all over the city, but more to the northeast.

MR. KAUFMAN: No further questions.

THE COURT: You may step down.

(Witness excused.)

THE COURT: Next witness.

MS. HYNES: The government calls Patricia Miller.

XXX PATRICIA CANDACE MILLER,

called as a witness by the government, being first duly sworn, testified as follows:

THE COURT: You may proceed.

MS. HYNES: Thank you, your Honor.

XX

DIRECT EXAMINATION

BY MS. HYNES:

Q I am going to ask you to keep your voice up so all of the jurors can hear you.

Where do you live?

A In Albuquerque, New Mexico.

Q How old are you?

A 30.

Q What is your educational background?

A One year of college.

Q When did you first move to Albuquerque?

A In 1962.

Q How old were you at that time?

A Almost 15.

Q Did you go to high school in Albuquerque?

A Two years, yes.

Q After you graduated from high school, what did you do?

A I went to Oklahoma City to attend nursing school for approximately six months. Then I came back to New Mexico and attended the University of New Mexico for a semester.

Then I traveled throughout the country.

Q For what period of time did you travel?

A From 1965, '64 until December of 1968.

Q In December of 1968, did you return to Albuquerque?

A Yes.

Q Did you have family in Albuquerque at that time?

A Yes.

Q Who was that?

A My mother and sisters.

Q Did there come a time when you came to work for Rio Rancho Estates?

A Yes.

Q When was that?

A January of 1969.

Q How did you come to apply for a job at Rio Rancho?

A I responded to an advertisement in the paper.

Q What job were you applying for?

A Tour guide, as it turned out. It was placed in the paper as public relations.

Q Who interviewed you for the job?

A Duffy Reynolds and Jim Wall.

Q Who was Jim Wall?

A The tour director for the company of Rio Rancho.

Q Who was Duffy Reynolds?

Q She was another tour guide.

Q Were you hired?

A Yes.

Q After you were hired, what happened? Did you receive any training?

A Yes.

Q Describe what the training was, how long didit last?

A Actual training in the office of about approximately two weeks as best as I can remember.

Q Who conducted these training sessions?

A Jim Wall.

Q Do you recall what the training sessions consisted of?

A Yes, they consisted of the first several days were as far as what the company was, who the officers were, the assets of the company, what they did.

Q Were you told who the officers of the company were?

A Yes.

Q Do you recall what officers you were told about?

MR. ARKIN: Objection.

A Could you repeat the question?

MR. FLEMING: Objection.

THE COURT: Overruled.

Q Do you recall what officers you were told about in the training session?

A Yes. Chester Carity, Danny Friedman, Howard Friedman, Hank Hoffman, I believe. I can't think of any other right now.

(Continued on next page.)

Q Was Irving Blum mentioned as an officer?

A Yes.

Q Was Herman Oberman mentioned as an officer?

A Yes.

Q What else were you told at the training session about the company?

A That it was founded by a group of young businessmen who had come together and invested their money in oil, I believe, in Oklahoma and then they purchased property in Florida and sold property and finished a community, Rainbow Lakes, I believe is the name of it.

Q In Florida?

A Yes.

Q And what else were the training sessions -- what else did they consist of?

A We were then given pamphlets and books on the history of New Mexico and Albuquerque, its cultural aspects, its economic aspects, projections as far as growth, that sort of thing.

Q The books that you described about the history of Albuquerque, who publisned those books, if you know?

A Some of the pamphlets were done by the Chamber of Commerce, by the University of New Mexico, by a state government agency.

Q And you mentioned a pamphlet on -- was there a pamphlet on growth of New Mexico or of Albuquerque?

A That wasn't a pamphlet, I believe it was just a fact sheet.

Q And where did this fact sheet come from?

A From the Chamber of Commerce.

Q And what do you recall was in the fact sheet?

A Things like Albuquerque at that time was the tenth fastest growing city in the U.S.

Q Was there any material distributed to you on the direction of growth of Albuquerque?

A Yes.

Q And where did that material come from?

A From Rio Rancho, the AMREP Corporation.

Q And what do you recall was contained in that material?

A In some of the pamphlets it just showed on maps and little pictures that the growth was going to the northwest.

Q I show you a pamphlet entitled "This is My Land," which is Government's Exhibit 388 in evidence, and direct your attention to pages 8 and 9 (handing).

Were you shown that pamphlet in your training session?

A Yes.

Q Were you shown other promotional pamphlets in your training session?

A Yes.

Q I show you a map which has been marked 271 in evidence, and ask you if you can recognize that (handing).

A Yes.

Q Was that given to you in your training sessions?

A Yes.

Q In addition to the pamphlets that you have just identified, was anything said at the training sessions about the direction of growth of Albuquerque?

A Yes.

Q What do you recall being said?

A We were explained that the city had to grow to the northwest because it was blocked off on all sides from further growth; that directly east was the natural barrier of the Siandia Mountains and government land that could not be used, that directly north was Indian pueblos, directly south military land and reservations and directly to the west was the Atrisco Spanish land grant.

Q Were you given any instructions in your training sessions as to what to tell purchasers of land at Rio Rancho with respect to the growth of Albuquerque?

A Explain what you mean.

Q Were you given any instructions at your training sessions as to what to tell prospective purchasers as to the directionof growth of the city of Albuquerque?

A Exactly what I just said. We were to explain to them that the city was blocked off on all sides except to the northwest.

Q Were you given any instructions with respect to what you could say to a customer concerning the size of Rio Rancho Estates?

A We were told not to mention the size.

Q Who told you that?

A It was -- it was told to me -- Jim Wall, for one, and various other people in the tour department and in the sales department as the years progressed.

Q How long did you stay with AMREP?

A Until September of 1974. However, I had left for a six-month period in 1971 and I spent six months in Europe.

Q Did you also go to a different sales office?

Did there come a time when you went to Wisconsin?

A Yes.

Q And approximately when was that?

A When I came back from Europe, which was in

March, I believe, of 1973 -- no, '70 -- I can't remember the year now. It must have been '71 or '72.

Q In any event, when you went to Wisconsin, what did you do? Where did you go and what did you do?

A I worked for Sunshine Properties.

Q What was Sunshine Properties?

A It was a real estate broker that worked with the AMREP Corporation.

Q And did Sunshine Properties sell Rio Rancho Estates land?

A Yes.

Q And who was the manager of Sunshine Properties?

A Bernie Stolzman, Jr.

Q And how did you come to go to Wisconsin to the Sunshine Properties?

A Why did I go?

Q How did you come to go?

A Mr. Stolzman asked me if I would like to work for him.

Q And what did you do?

A I was to call land owners whose accounts had become delinquent and try to set up some type of program for where they could catch up on their payments and just see if we couldn't do something to help them.

Q How long did you stay with Sunshine Properties?

A About two and a half months.

Q At the time that you were at Sunshine Properties, did you have occasion to attend any sales dinners for Rio Rancho land?

A Yes.

Q Approximately how many dinners did you attend?

A I can't remember exactly. It was maybe ten.

Q Did there come a time during the course of your employment with Rio Rancho when you attended sales dinners in New York?

A Yes.

Q And approximately when was that?

A One was in October of the year I went to Europe, which I think was 1971, and another one was at ATC Realty in 1972, the summer of 1972, I believe.

Q The first dinner that you mentioned, was that an ATC dinner?

A That was a Roth dinner on Long Island.

Q Roth?

A Roth, yes.

Q What is Roth Realty?

A It also is a realty company that was in association with the AMREP Corporation.

Q And where was that dinner, if you recall?

A It was on the Island, on Long Island. I do not remember the name of the restaurant.

Q Other than the period of time when you worked for Sunshine Properties in Wisconsin and the period when you were traveling in Europe, from January of 1969 until sometime in 1974, you were employed by Rio Rancho, is that correct?

A Right.

Q And were you a tour guide during this entire period of time?

A Yes, I was.

Q You testified that you were told by Mr. Wall and other sales personnel not to tell a customer how large the property was.

Did Mr. Wall give you any reason for that?

A Yes. The explanation was, and it made sense to me at that time, also, that most people from the east would probably be aghast at the size of that much land, that they would not be - that they would not understand the size or the immensity of that much property.

Q In 1969, when you were hired by Rio Rancho, how large was the property?

A As far as I can recollect, it was somewhere around 55,000 acres.

Q Did you know at that time that Rio Rancno was larger than the city of Albuquerque?

A No, I did not.

Q Did there come a time when Rio Rancho grew in size, became larger than that 55,000 acres?

A Yes.

Q And do you know approximately when that was?

A It was between a year and two years after I went to work for the company.

Q And how large did Rio Rancho become?

A I believe it was close to 100,000 acres.

Q Did you know at the time that you state that Rio Rancho was close to 100,000 acres that it was lrager than the city of Albuquerque?

A I then realized it, yes.

Q When you were being trained as a tour guide, did you receive or were you given a tour outline?

A Yes.

Q What was the tour outline?

A It went through the actual tour route that we were to take with the people on the buses. It was descriptive of everything that we went by and, you know, history and facts about Albuquerque thrown in.

Q Were there different types of tours that were run by the company?

A Yes.

Q And what are the different types of tours that were run by the company?

A There were flight tours, and they consisted of property owners who had never seen their property who came from various points throughout the U.S. and Japan and some European tours.

There were also daily tours, people who drove out to Albuquerque on their own who were taken on a shortened version of a weekend or flight tour, and there were also OPC tours.

Q Was there something known as a walk-in tour?

A People who walked in or drove in on their own were usually put on a daily tour. Walk-ins are -- you are probably talking about people who never went on a tour at all.

Q Did you handle all three of these types of tours during the course of your employment?

A I have.

Q Did you handle tours from ATC in New York?

A Yes, I did.

Q Did you handle tours from Roth Realty in New

York?

A Yes.

Q And during what period of time did you handle those tours?

A During the entire portion of working for Rio Rancho.

Q Did those New York tours differ in any respect from tours from other parts of the country?

A Yes.

Q In what respect?

A In every respect.

On the New York and Roth and SGR tours, the broker from the particular companies ran the show, you might say. They did everything the way they wanted.

The tours from the other parts of the country, the tour department in Rio Rancho did everything.

Q Who were the brokers on the New York tours?

A Peter Miller, Lenny Geller, and Andy Estrema from Roth.

Q Peter Miller, he is no relation to you, I take it?

A No.

Q Can you describe the New York tours, what you did from the time the plane arrived, just generally run through what happened on a New York tour.

A Day-by-day account?

Q Yes.

A We would pick them up --

MR. FLEMING: Objection, your Honor.

THE COURT: We have had that five times, Ms. Hynes.

MS. HYNES: Your Honor, there are differences that I would like to bring out.

THE COURT: Direct yourself to the differences. I am not going to sit here for a half hour, and neither is the jury, to listen to something they have heard five times already.

Q On the New York tours, did you have meetings with the brokers and the sales personnel on the New York tours?

A Yes.

Q And when did those meetings occur?

A Very early in the morning and very late in the evening every day.

Q And who called those meetings?

A Whoever brought the tour down.

Q What was the purpose of those meetings?

A To go over every person who was on the tour, to see whether they were under keep, cancel or there was a possibility of upgrading them.

Q What is an upgrade?

A A person who buys additional property to what they already owned.

Q On the tours that came down from New York, were there ever occasions where local papers were bought up?

A Yes.

Q And can you describe what happened in those situations?

A In both situations, there were articles that put Rio Rancho in a negative light, and in one instance Norman Fried bought all the papers that were in the motel and brought them to his room and another occasion Lenny Geller ordered one of the sales consultants to do it.

Q You said Norman Fried.

Who was Norman Fried?

A He was the tour director after Danny Monaco was promoted for the ATC, SGR and Roth Realties. They were all combined tours.

Q Do you recall where the tour was staying, what hotel this tour was staying in on that occasion?

A The one I definitely remember was at the Holiday Inn midtown in Albuquerque, and the other one, I believe, was the Ramada Inn, but I'm not sure.

Q To the best of your recollection, did that situation of buying up local papers happen more than the two times that you have just told us about?

A I don't know.

(Continued on next page.)

Q On a New York tour, if someone wanted to rent a car, were you given any instructions?

A Yes. We were to bring whoever wanted to rent the car to talk to Danny Monaco or Norman Fried or Lenny or whoever was there.

Q This was Lenny Geller?

A Yes.

Q Who gave you those instructions?

A Lenny Geller, Danny Monaco, Norman Fried.

Q On the evening before you went to see the property, there was a dinner, is that correct?

A Yes.

Q Were there occasions where Peter Miller spoke at that dinner?

A Yes.

Q How frequently did Peter Miller attend tours?

A Well, just about every tour, until about the last year before he died, and then it was not so often.

Q When did Peter Miller die?

A I can't remember the year. I'm sorry. 1972 possibly.

Q Would it refresh your recollection if it was 1973?

A Okay.

Q The dinners that Peter Miller attended the evening before they went to see the property, did he give a presentation?

A A speech?

Q Yes.

A Yes.

Q And do you recall what he said in that presentation?

A He just mentioned the values of living at Rio Rancho and buying property there.

Q Did he say anything about a real estate office?

A Yes.

Q What did he say?

A He mentioned that the company would be having a resale office to resell land eventually.

Q Were the New York tours generally large tours?

A Yes.

Q Were there amy times several buses?

A Yes.

Q On property day, what would happen with respect to this gruop going out to see their property?

Can you describe what happened with the various buses?

A Well, most of the tours in the past several years were four bus tours. Two buses would see their property the first property day. That was usually on a Friday.

They would both go out to property, they would listen to a speech at the property office, then the buses were divided again and bus No. 2 was usually taken to the tram, Bus No. 1, the couples on it would go out to see their property with salesmen, as many as they were, the rest of them were brought over to the Panorama Inn where they were kept entertained until the salesmen came to get them.

Q When the salesmen came to get another customer, would he bring back someone who had just seen his property back to the Panorama Inn?

A Yes.

Q Were there occasions when customers who had seen their property were not brought back to the Panorama Inn?

A Yes.

Q And what were those occasions?

A People who had cancelled their property or who were very negative towards the company were sometimes brought to a shopping center or to the motel where we were originally staying at. They would rejoin the tour later that evening.

Q You mentioned that there was a presentation at the property before the people went out to see their land.

Were there any charts used during this presentation?

A Yes.

Q Who usually gave the presentation?

A The property manager or the sales manager.

Q Who was that?

A There were many different ones. David Lunar, Gene Hetterick, Bob Berg.

Q And would you describe the charts that were used at this presentation?

A They were basically along the same line that were used in the dinner parties throughout the country. They was a chart that described financial leverage, a chart that described the differences between investing in savings accounts or in the stock market or in land.

Q What was said with respect to the chart on the differences of investing in various types of either stock or in the banks and land?

A That investing in a savings account you would get five percent or whatever, it was fairly safe, but not a big return on your money.

Stocks and bonds you could make a lot of money with your investment, however, you stood a chance of losing it all, also.

As far as land was concerned, it was said to be the safest and most secure form of investment.

Q Was there a chart on price increases?

A I don't remember whether there was a chart or not on price increases.

Price increases were mentioned.

Q What was said about price increases?

A The land had gone up a certain amount in a certain amount of time.

Q Was anything said about special land being set aside for the future?

A Yes.

Q And what was said?

A On every New York tour, it was announced that Mr. Geller or Mr. Miller or whoever the broker was with the tour that the company had set aside a particular piece of property for sale for that particular tour.

Q Did you know whether that was a fact or not?

MR. FLEMING: I Object to that.

THE COURT: She can ask whether she knew. She can say yes, she knew.

MR. FLEMING: The answer, it seems to me, is meaningless, that's why I am objecting.

THE COURT: Overruled.

A Did I know it or not?

I -- I knew it was not necessarily true, because I felt that there was land set aside for everyone, not just that particular tour.

THE COURT: Wait a second. That is not the question, what you felt.

What did you actually know?

THE WITNESS: I have to answer yes or no on that, is that what you are saying?

THE COURT: Yes.

A Repeat the question.

Q Do you know whether that was a fact?

A Do I know if it was a fact that they reserved land for that tour?

Q Yes.

THE COURT: Yes.

A I felt -- no.

Q How were you compensated when you worked as a tour guide?

A What my salary was?

Q Were you paid a straight salary?

A We were paid a straight salary at first.

The last year or so, we were paid a salary plus commission.

Q What was the commission based upon?

A On the amount of cancellations and upgrades.

Q Were you paid a commission if there were fewer cancellations?

A Yes.

MR. ARKIN: Your Honor, I move to strike the question.

THE COURT: I don't understand that.

You were paid a commission on cancellations?

THE WITNESS: Yes, sir.

I don't know how they figured it, but it was based on -- in other words, the least amount of cancellations there were and the more upgrades the more we got.

THE COURT: But suppose there were no upgrades and just cancellations, you still got a commission?

THE WITNESS: No, then we did not.

THE COURT: That is where your answer seems to be misleading.

Q Mrs. Miller, are you familiar with the term solidification?

A Yes, I am.

Q What is solidification?

A Someone who keeps their property.

Q Was your commission based upon solidifications and upgrades?

A Yes.

THE COURT: You did not receive any compensation for cancellations, did you?

THE WITNESS: No.

Q If you were the tour guide on a tour where there were no cancellations, did you receive a commission?

A No cancellations and no upgrades?

Q Let me just break it down.

If there were no cancellations and no upgrades, did you receive a commission?

MR. ARKIN: If your Honor please, it is a hypothetical question.

I object to it.

THE COURT: Overruled.

She knows what her salary and commissions were based on. She is now being given a hypothetical case and she is being asked if she received any commissions in such a case.

Q If there were a tour that had no upgrades but no cancellations, did you receive any commissions?

A No.

Q And if there was a tour where there were no cancellations but there were upgrades, did you receive a commission?

A Yes.

Q Were the flight tours successful in terms of solidification and upgrades?

A Very.

MR. ARKIN: Objection.

MR. FLEMING: Objection.

THE COURT: Sustained.

Q Did you receive a commission on daily tours as well?

A It was all incorporated in one commission. They were quarterly commissions.

Q You mentioned that you also took people on the daily tours, is that correct?

A Yes.

Q How did the cancellation rate compare for the daily tours as opposed to a flight tour? Was it higher or lower?

A Higher.

Q You also mentioned that there was an OPC program.

A Yes.

Q What is the OPC program?

A The OPC program was designed to take customers who had never purchased property or had never been to dinner parties, people who were coming in as travelers or just coming through Albuquerque, they were picked up at all the different motels throughout the city and told that they would be able to go on a tour of the city and lunch at Rio Rancho at the Panorama Inn and a tram ride in the afternoon.

Q And was there an impression made at the Panorama Inn?

A Yes.

Q Did you attend a presentation for an OPC program?

A Yes.

Q And how did you come to attend that presentation?

A I attended two. One was done for all the employees of the company, all the tour guides and, you know, they went through the whole thing.

Another one was when Mr. Greenstein asked me to stay in the room because there were very few people, so I sat and had lunch with the people that were there.

Q Who is Mr. Greenstein?

A He was in charge of the OPC program.

Q How did the presentation at the OPC program compare with the sales presentations that you testified you attended in New York and in Wisconsin?

A It was the same thing.

Q And how did the OPC presentations that you attended in New York and Wisconsin compare with the presentation at the property just prior to the people going out to see their property?

A The same things were mentioned.

Q At the dinners you attended, the sales dinners you attended in Wisconsin and the sales dinners that you attended in New York and the OPC presentation that you testified to, what was the main inducement to purchase Rio Rancho land?

MR. FLEMING: Objection.

THE COURT: Overruled.

A Would you repeat the question for me?

MS. HYNES: May I have the question read back.

A 3024

(Record read)

A Investment.

Q Did there come a time when you received any instructions with respect to what you could say about investment?

A Yes.

Q And to the best of your recollection, when was that?

A It was either in the later part of 1973 or the early part of 1974.

Q Who did you receive the instructions from and what were those instructions?

A We received instructions from the tour department personnel and the sales office and the New York brokers when they came down with their tours that we were no longer to mention the word "investment".

Q Was any reason given?

MR. FLEMING: Can we be more specific, your Honor?

THE COURT: More specific than that?

MR. FLEMING: By the name of the person.

THE COURT: Who told her?

Can you give us the names of people who told you this?

THE WITNESS: Norman Fried, Lenny Geller I know definitely told us. I don't want to give out any other names because I really can't remember.

We were told not to mention "investment" because the company was going to stress relocation rather than investment.

Q You mentioned in your training sessions -- let me ask you -- withdrawn.

In your training sessions in the very beginning when you were hired by the company, did the company review the exchange provisions in sales contracts with you?

A Yes.

Q And do you recall what the exchange provision in the contract was?

A To the best of my recollection, it stated that any land owner could trade in a half an acre or other lot into any building area when they wanted to actually build on it or move into Rio Rancho.

Q Did there come a time when the company began to offer lots in Corrales Heights as an exchange?

A Yes.

Q Do you recall approximately when that was?

A Late '73, early '74, I think. I can't be specific.

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Q At the time that the company offered lots for exchange in Corrales Heights, what was the exchange privilege into Corrales Heights?

A They could exchange their lot for a quarter acre in Corrales Heights and they had to pay an additional $1500 to do so.

Q Did you receive any complaints from customers on your tours with respect to that exchange privilege?

A Yes.

Q Did you communicate -- what were those complaints?

A Many people that talked with me said that they did not want to live in Corrales Heights, that it looked like every other neighborhood. That they would rather have a larger piece of property and live in other areas of Rio Rancho.

Q Were they able to exchange into other areas of Rio Rancho?

A As far as I know, no.

Q Did you communicate those complaints that you received to anyone else or any other person at Rio Rancho?

A Yes.

Q Who did you communicate it to?

A With everyone that wanted to talk about it.

Q Did you communicate it to Mr. Wall, your tour director?

A Mr. Wall at that time had received a promotion and he wasn't directly -- I mean he wasn't available to speak with all the time.

Q Who was your immediate supervisor at that time?

A Gary Johnson.

Q Did you communicate it to Mr. Johnson?

A Yes.

Q Did there come a time during your employment with the company when sales personnel could only sell two lots to a purchaser?

A Yes.

Q Approximately when was that?

A This same period of time we have been talking about, 1974, I believe, the early part.

Q Do you recall the reason for that?

A The reason for it? This was at the same time that we were no longer--

MR. FLEMING: If your Honor please, I object to it.

THE COURT: Yes.

Q Do you recall how that was communicate to you, who communicated that to you?

MR. FLEMING: Same objection.

A That was done through the sales department.

Q Who was in charge of the sales department?

A I believe it was Green Hendrick.

Q Do you recall whether it was Mr. Hendrick who communicated that to you?

A I cannot tell you for sure who it was.

Q But, in any event, the best of your recollection is that that was stated at a sales meeting that you attended?

A Yes, and also with the New York tours that came down, it was reiterated.

Q Was any reason given for that change in policy?

A That we were switching over --

MR. FLEMING: Objection, your Honor.

THE COURT: Overruled.

A From investment. That we were switching over from investment to relocation.

Q Prior to 1974 was there any limit on the number of lots that could be sold to a customer on a tour or at any other time?

A Not that I am aware of.

Q You mentioned that in 1974 there was a shift in emphasis to relocation.

MR. FLEMING: I object to the form of that question.

MR. ARKIN: Objection, your Honor.

THE COURT: Sustained.

Q You talked about the exchange privilege-- the ability to take one lot and exchange it for a lot in a building area, is that correct?

A Yes.

Q And if a person owned two lots, what could they do with the other lot?

MR. ARKIN: Objection, your Honor.

THE COURT: Overruled.

A Leave it where it is. I don't know.

Q To your knowledge was there any local resale market for Rio Rancho lots in Albuquerque?

A No.

Q You mentioned that you received information from the company with respect to the direction of the growth of the city of Albuquerque being to the northwest.

Did there come a time when you began to question that statement?

MR. ARKIN: Objection.

THE COURT: Sustained.

Q You were employed by Rio Rancho from 1969 until September '74?

A Yes.

Q Did you continue to make statements about the direction of growth in the city of Albuquerque to customers on these tours?

A Yes.

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Q Was your statement that the direction of growth of the city of Albuquerque was to the northwest?

A Yes.

Q And that that was the only direction that the city could grow?

A Yes.

Q Is that a correction statement?

MR. ARKIN: Objection.

THE COURT: Sustained.

Not through this witness, Ms. Hynes. Next question.

MS. HYNES: Your Honor, we are entitled to bring it out.

THE COURT: Next question.

Q You have lived in Albuquerque from 1969 until 1976, is that correct, Mrs. Miller?

A Yes.

Q Can you describe the areas where the growth of Albuquerque has taken place in that period of time?

MR. FLEMING: I object.

THE COURT: Overruled.

A The major portion of building as I see it is in the Northeast Heights.

Q With respect to the community at Rio Rancho, who comprises that community?

MR. ARKIN: Objection, your Honor. I don't understand it.

THE COURT: I don't know what it means either.

Q There is a community at Rio Rancho Estates, correct, Mrs. Miller?

A Yes.

Q Is that community made up of people who lived in Albuquerque and moved to Rio Rancho to the best of your knowledge?

A No.

Q Who does live at Rio Rancho Estates to the best of your knowledge?

A I would say the major portion of the population is from the eastern part of the United States.

Q Were these people who purchased land and then moved to Rio Rancho?

A Yes, for the most part.

Q Did you ever buy land at Rio Rancho?

A No.

MS. HYNES: I have no further questions.

THE COURT: We will have arecess.

(In open court - without the presence of the jury)

MS. HYNES: Your Honor, I would just like a clarification on your Honor's ruling, but we will need all your counsel here.

THE COURT: It looks like you have lost them. There is an application being made by Mr. Oberman and Mr. Blum.

The reporter has to hear you.

MR. RUBINO: I make an application with respect to both Mr. Oberman and Mr. Blum.

As you know, they are both rather advanced in age and they find great difficulty in getting taxicabs at 5:00 o'clock. Would your Honor be good enough to excuse them at 4:30 especially during inclement weather so they do not have that difficulty?

THE COURT: Is this your application?

DEFENDANT BLUM: Yes, sir.

THE COURT: Your application?

DEFENDANT OBERMAN: Yes, your Honor.

THE COURT: It is raining out today, I will grant the application today, but I cannot make a general rule that they leave every day at 4:30.

DEFENDANT BLUM: Only when it is bad to get a cab.

THE COURT: This is a terrible day, it has been showing so you may leave early.

MR. RUBINO: May I make another application?

Ms. Hynes asked a question of this witness which I thought was extremely unfair, namely, did she know Mr. Oberman.

She knows in respect of her own opening and on the record as she is very familiar with that he was not an officer in 1969. I am trying to remain invisible in this case and not cross examine and I do not want to bring that out.

I would like you to make a statement now that you know that in 1969 he was not an officer. In fact, according to your indictment he was an officer only in 1961.

MS. HYNES: The question went to what the witness was told at the training session as to who the officers of the corporation were.

THE COURT: The witness offered nothing and you were probing her recollection and you brought it out in that manner.

MS. HYNES: Because the witness had told me that Mr. Oberman was mentioned to her as an officer at that time, at that training session as was Mr. Blum.

THE COURT: The fact was that he wasn't.

MS. HYNES: Your Honor, I am trying to elicit from the witness what she was told in her training sessions. If she was told that in her training sessions --

THE COURT: I think that is immaterial. If you know as a fact that the witness isn't telling the truth.

MS. HYNES: Your Honor, it is not a question of the witness telling the truth.

MR. RUBINO: Your Honor, may I have a clear and explicit statement on the record --

(Recess)

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(In the robing room; counsel present.)

THE COURT: What is the problem?

MS. HYNES: Your Honor, with respect to your Honor's ruling on my line of inquiry to Mrs. Miller on whether she believed about the direction of growth of Albuquerque, on the prior witness the defense brought out on cross examiantion what that witness' belief was, and we believe that since that is a line of cross examiantion that is being taken that the government is entitled to elicit that on the direct testimony of that witness.

Your Honor's ruling has been that if something is not covered on direct, the limits of redirect have been narrow and, therefore, we should be entitled to bring that out.

THE COURT: No, it if sair, not narrow.

MS. HYNES: Well, your Honor has stated that information should be brought out on direct.

We are trying to bring out --

THE COURT: I don't mind you asking her the question at the time she made the statement did she think she was lying, but not in hindsight in 1976 ask her whether she knew she was lying in 1969 or 1970.

MS. HYNES: Then I will reframe my question and ask her that question.

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MR. ARKIN: It is cross examination now, I think.

THE COURT: I will let her ask the question.

The question was improperly put and the defense properly objected to it, because the import of your question was was she lying then based on what she knows today her assumption that the northeast has grown faster than the rest. But when she was telling the people those things did she think she was lying, that's the qeustion.

You can ask that question.

MR. RUBINO: Your Honor, in view of our colloquy at the bench, may I ask Ms. Hynes to make a statement now that Mr. Oberman is present --

THE COURT: No, that is unneccessary because if that's all she has to get your client in, he is going to be thrown out of the case, so you don't get to the jury. Okay.

MR. RUBINO: Amen.

THE COURT: She knows that. She doesn't have to be told that.

(In open court: jury present.)

THE COURT: I think Ms. Hynes has a question or two she would like to ask.

DIRECT EXAMINATION (Continued)

BY MS. HYNES:

Q Mrs. Miller, you testified that from 1969 to 1974 you made statements concerning the direction of the grown of the City of Albuquerque, is that correct?

A Yes, yes.

Q And what were the statements that you made about the direction of the growthof the City of Albuquerque?

THE COURT: That we know. She has already told us.

Q At any time during the course of your employment with Rio Rancho when you were making those statements about the direction of the growthof Albuquerque, did you believe it not to be true?

MR. FLEMING: I object.

THE COURT: Overruled.

At the time you were making those statements, did you think they were untrue?

THE WITNESS: At the time, no. It's only --

THE COURT: That's right.

THE WITNESS: Okay.

CROSS EXAMINATION

BY MR. ARKIN:

Q Mrs. Miller, I am Stanley Arkin. I represent certain defendants in this case.

Were do you now live in Albuquerque?

A I live on Alamo Farm Road in the Village area.

THE COURT: Where is that?

THE WITNESS: Northwest.

THE COURT: Northwest?

THE WITNESS: Yes, sir.

Q That is across the Rio Grande?

A It's right on the Rio Grande.

Q How far are you from Rio Rancho?

A Aprpoximately four, five miles.

Q Did you ever live at Rio Rancho?

A Yes, I did.

Q In a house?

A Yes.

Q In what area of Rio Rancho?

A Unit 16.

Q Was that with your family?

A No, with a roommate.

Q A roommate?

A Yes.

Q You rented a house there?

A Yes.

Q For how long?

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A Two or three months.

Q I take it you have a lot of friends who live at Rio Rancho, don't you?

A Yes, I do.

Q Friends you made over the years?

A Yes.

Q People still live there?

A Yes.

Q How many tours, altogether, from 1969 to 1974 did you work on?

A An average of three a month, whatever that adds up to.

Q Hundreds?

A Yes.

Q In those hundreds of tours, you recollect two occasions when Mr. Fried or Mr. Geller bought up all the newspapers in a particular motel?

A Yes, sir.

Q That certainly was not done as a matter of regular course, was it?

A No.

Q And that was Mr. geller and Mr. Fried, wasn't it?

A Yes.

Q Mr. Leonard Geller?

A Yes, sir.

Q You lived in Albuquerque, say, fourteen years, on and off?

A Yes, sir.

Q Except for your little sojourn in Europe for six months?

A Yes, sir.

Q That was a vacation in Europe, I take it?

A That's what it turned out to be, yes.

Q By the way, you have never sold Rio Rancho land, have you?

A No, sir.

Q And you have never been involved in sales?

A Not directly.

Q All of your involvement was with the tours, wasn't it?

A Yes, sir.

Q You were there to guide people around Albuquerque and make them comfortable and that kind of thing?

A Those were some of my duties, yes.

Q Since you lived in Albuquerque, have you seen it grow?

A Yes, sir.

Q It has grown tremendously in those ten or fifteen years, hasn't it?

A Yes, it has.

Q And its boundaries have expanded, haven't they?

A Yes.

THE COURT: I don't know what you mean when you say boundaries.

Do you mean the city boundaries were changed or the outlines of the city have expanded without regard to city limits?

MR. ARKIN: I like your Honor's language.

Q The outlines of the city have changed, haven't they?

A Yes.

Q They have grown larger?

A Yes.

MR. ARKIN: Thank you, your Honor.

Q During the time that you were at Rio Rancho in 1969 to 1974, did you see growth along Coors Road?

A Have I seen growth along Coors Road?

Q Yes.

A Yes.

Q That is the road which leads from Albuquerque to Rio Rancho?

A Yes, sir.

Q You saw the highway expand from two lanes to four lanes?

A Yes.

Q Did you see the springing up of gas stations, restaurants, shopping centers, that kind of thing?

A One gas station and --

Q How many gas stations are there on Coors Road between Albuquerque and Rio Rancho?

A Two.

Q Have you seen the LaLuz development?

A Yes.

Q Taylor Ranch?

A Yes.

Q There is a shopping center on Coors Road about midway between Albuquerque and Rio Rancho?

A Yes.

Q There is a shopping center on Coors Road at the foot of the hill about a mile-and-a-half from the Rio Rancho gates?

A Yes.

Q A new high school?

A Yes, sir.

Q It is a large high school, isn't it?

A Very.

Q To accommodate all the new poepoe who live on the northwest masa, isn't that so?

A Yes, sir.

Q That high school was built when?

A Two years ago.

Q Have you seen it since that time?

A Yes, I have.

Q Did it appear to be populated?

A Yes.

Q Lots of students?

A Yes.

Q Have you seen the EE&G Building? That's an industry, EE&G.

A Where is it located?

Q Let me ask you. I can't tell you. I will ask you a question.

EG&G, excuse me. EG&G Building. Do you know what I am talking about now?

A I'm familiar with the firm, but I'm not familiar with where they are located.

Q You go down Coors Road from Corrales and turn right, do you notice a building there, an industrial building near the airport?

A Oh, yes. Okay. Okay.

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Q That has grown up, been built in the last - what, five or six years?

A Yes, it must have been.

Q And the Spartan Industry Building, are you familiar with that?

A Yes.

Q Also in the last few years, is that right?

A Yes, sir.

Q The problem is you nod your head and the machine doesn't record it.

A Okay.

Q So you have to say yes or no or whatever else the question calls for.

What about Mountain Bell, a new installation there?

A They have added on to their installation.

Q They built a building there?

A Yes.

Q And that is a relatively new building?

A Yes.

Q At the time that you were at Rio Rancho, I take it you saw it grow, too, didn't you?

A Yes, sir.

Q You saw Corrales started and grow into a large neighborhood community?

A Yes.

Q In Corrales Hights?

A Yes.

Q You saw Unit 16 being filled up?

A Yes.

Q You saw the start of Unit 11?

A Yes.

Q You saw the start of Unit 7?

A Yes, sir.

Q You saw the population double and double again in the time you were there?

A Yes.

Q Were most of the tour guides whom you hired people who had lived in Albuquerque for some period of time?

A What do you mean by some period of time?

Q Well, what I am really asking you is whether you hired mainly local ladies to work as tour guides.

A Local ladies?

Q You didn't bring ladies in from New York or Milwaukee?

A No, no. Okay.

Q They were people who lived in Albuquerque?

A Yes.

Q And a number of them, in fact, have been born and brought up in Albuquerque, isn't that so?

A A couple of them have that I know of.

Q And others have lived there for a number of yeras?

A I don't know.

Q How many tour guides did you hire when you were tour supervisor?

A I was never a tour supervisor.

Q Well, you were -- did youhire tour guides at all?

A No, I did not.

Q That was Mrs. Davis.

A Right.

Q How many tour guides were employed at the time you were employed?

A When I was hired?

Q Well, during the course of your employment, what was the average number of tour guides?

A At one time there was approximately 15 to 18, I would say, at other times there has been 5 or 6.

Q And would you say it is fair that all or most all of these ladies were familiar with the Albuquerque region?

A Certainly, after being --

Q And you were in particular, weren't you?

A I was familiar with Albuquerque?

Q Yes.

A Certainly.

Q You went to high school there?

A Two years of high school, yes.

Q By the way, you said that in your opinion the northeast seemed to be the fastest growing area rather than the northwest, is that right?

A Yes, sir.

Q That is based on your personal observations?

A Yes, sir.

Q You haven't read any reports on that, have you?

A No.

Q You haven't done any studies of it?

A No.

Q And you don't know that there are more housing starts on the northwest than there are in the northeast, do you?

A Just what I see.

Q That there are more housing starts in the northwest?

Q No.

Q You don't know that?

A No.

Q Do you know what the percentage of growth is that is between the northeast and northwest?

A No, sir, I do not.

Q You don't know that the percentage of growth, that is in population, in housing starts is greater in the northwest than the northeast?

MS. HYNES: Objection.

THE COURT: I assume this is going to be connected up with the defendants' testimony.

MR. ARKIN: Yes, sir. Yes, sir.

Q When you were hired, you were trained by Jim Wall?

A Yes, sir.

Q He was then tour director?

A Yes.

Q And you worked under him for a couple of years?

A Yes, sir.

Q He trained you for about two weeks when you first came in?

A Yes.

Q And he provided you with materials from the University of New Mexico?

A Yes.

Q And materials from the Chamber of Commerce?

A Yes.

Q And other public materials?

A Yes.

Q Do you know where they came from?

A The DOD, the Department of Development.

Q That is the State Department of Development?

A Yes.

Q The New Mexico State Department of Development?

A Yes.

Q What else?

A Then company pamphlets and fact sheets.

Q You don't know what source, if any, the company fact sheets were based upon, do you?

A No, I don't.

Q They didn't specify?

A No.

Q Did you use these materials to acquaint yourself with the Albuquerque area and Rio Rancho?

A Yes

Q It was part of your training?

A Yes.

Q The materials told you about the history of Albuquerque?

A Yes.

Q And they told you about the Indian reservations which surrounded Albuquerque in certain parts?

A Yes.

Q About the geography of Albuquerque?

A Yes.

Q About the Atrisco land grant?

A Yes.

Q What is the Atrisco land grant?

A It was a portion of land that was given by the King of Spain in the early 1500's to a family as a favor for actualy colonizing or settling in the New Mexico area, and from what I know of it, the government of the United States and of New Mexico legalized the document of ownership as being legal and valid and is to be given to the heirs of that particular family.

Q The Atrisco heirs?

A Yes.

Q And there are a lot more than one family, I gather?

A Yes, very many more. That's the problem.

Q That's the legal problem they have?

A Yes.

Q I take it your presentations during the years you were with Rio Rancho when you went on these buses with the people and you spoke to them were consistent with the materials which Mr. Wall had provided you with your training sessions, weren't they?

A Yes.

Q And so these pamphlets you got from the DOD and from the Chamber of Commerce, the University of New Mexico, the information in them was reflected in what you said?

A Yes.

Q And I take it Mr. Wall told you to be very careful about what you said to people who were on these tours, didn't he?

A Yes, he did.

Q Did you also, as part of your employment or training, go to programs which were run by the Albuquerque Chamber of Commerce?

A Yes, I did.

Q To learn about Albuquerque?

A Yes.

Q And also to programs given by the Univerity of New Mexico?

A Yes, I did.

Q To learn about Albuquerque?

A Yes, sir.

Q And what you learned was also reflected in what you told the people?

A I hope so.

Q And some of these programs that you went to and information which you obtained from Mr. Wall concerned the growth of Albuquerque, did it not?

A Yes

Q You testified a little while ago about the Corrales Heights and the exchange area, am I right?

A Yes.

Q You said you received complaints from customers that when they wanted to exchange into a different kind of neighborhood than Corrales they weren't able to do that.

A Yes, sir.

Q You said you received those complaints sometime in 1974.

A Yes.

Q About how many complaints did you receive?

A Quite a few.

Q Well, can you give me an approximation?

A Between twenty and thirty.

Q And you brought those to the attention of whom?

A To several different people. To my head supervisor, who was Gary Johnson, but he could not do anything about it.

Q Just who, ma'am.

A And to the people on the tours, such as Lenny Geller, Norman Fried and Danny Monaco.

Q The people on the tours principally, then?

A Yes.

Q You had nothing to do with the implementation of the exchange policy, did you?

A No.

Q Were you familiar with the contract, the order purchase contract?

A It was part of our training session when I first went to work with the company.

Q But you didn't deal with it since your training session?

A No.

Q Do you know how the exchange obligation legally changed from time to time?

A No.

Q Did you know in 1974 the Corrales Heights was an even exchange area?

A No.

Q Did you know that Unit 11 had been opened as an even exchange area?

A Yes, but this was --

Q Do you know when it was opened?

A It seems like it was right before I quit, so it must have been 1974.

Q What is an even exchange, Mrs. Miller?

A To me it would mean that they would not have to pay any additional funds, that they could transfer a half an acre for a half an acre in a building area.

Q Do you know that Corrales Heights had particular amenities, such as underground sewers, underground electricity and phones and so forth which were not required by the contract furnished to the purchaser?

A Yes, I did.

Q Do you know the additional monies that were paid for that were for those additional amenities?

A That's what I was told.

Q With respect to Corrales Heights, do you know whether Unit 7 -- excuse me.

With respect to the exchange, do you know qtjw 10 Miller - cross

whether Unit 7 was an even exchange area?

A I was not aware of that.

THE COURT: Wait.

When you say even exchange -- I will ask this of the witness and see if we understand your question.

When you say Unit exchange, does that mean I give you back a half acre and you give me a half acre and my obligation to pay is the same as it was before I made the exchange?

THE WITNESS: Yes, sir.

THE COURT: All right.

Maybe for future reference, can you call thatan exchange?

MR. ARKIN: Yes, sir. That's what it was called.

Q Were you ever told by Mr. Wall that the only exchange area was Corrales Heights?

A Not by Mr. Wall, no.

Q Were you ever told that by Mr. Geller?

A Yes, and by Mr. Fried and other housing salesmen.

Q Mr. Geller was not a housing salesman, was he?

A No, he was not.

Q Mr. Fried was not a housing salesman, was he?

A No, he was not.

Q Who was the housing salesman that told you that?

A I can remember talking to people like Richard Dudding, and I can not remember the names of the other salesmen.

Q Do you say that was in 1974?

A Yes, sir.

Q That was after Corrales Heights became an even exchange area?

A No, this was before.

Q Do you know the precise date or the approximate date, rather, when Unit 11 was opened?

A No, I cannot remember it.

Q What about Unit 17?

(Pause)

Is it fair to say--

THE COURT: Wait. You have a question outstanding.

You said how about Unit 17? I haven't heard an answer.

THE WITNESS: I can't remember.

Q Is it fair to say that with respect to the tours which came down from various parts of the country to Rio Rancho that most of them stayed at the Panorama Inn?

A Just about all of the tours did, except for the New York tours.

Q And they stayed there depending upon the ability of the Panorama Inn to accommodate them and upon the decision of the particular tour leader coming down with them, isn't that so?

A Yes.

Q But most tours stayed at the Panorama Inn?

A Are we talking about --

Q I am talking about generally. Most tours stayed at the Panorama Inn?

A You are talking about New York and everybody combined?

Q Everybody combined.

A Most tours? All right, yes.

Q Which is right on the property?

A Yes.

Q During the time you took people around Albuquerque in buses, did you for a period of time during your employment point out pieces of property to people and say or tell them how much it had sold for at one time and how much it was selling for now?

A Yes.

Q That was part of the presentation which you made for a period of time while you were a tour guide?

A Yes.

Q Did you do anything to verify or to check the accuracy of what you were telling the people during those times?

A Yes.

Q What did you do?

A We called real estate brokers who were handling the sale of a particular piece of property.

Q And got the history of its pricing?

A Yes.

Q Is that something you did yourself?

A Yes. Several tour guides and I together did it.

Q But you did it, too, didn't you?

A Yes.

Q So when you told people a piece of property was selling at one price back fifteen years ago and selling at a different price now, that was based upon your own inquiry?

A Yes, sir.

Q And you were told to be careful and accurate about that, weren't you?

A Yes, sir.

Q You also took people up to the tramway, didn't you?

A Yes.

Q Did you go with them up there?

A Yes.

Q So that the jury and his Honor can understand what the tramway is, would you describe the view from a tramway of Albuquerque, that basin below it?

A The top of the tramway is well over 10,000 feet above sea level and you can -- you have a fantastic view of all the way out to Colorado, which is approximately 200 miles.

On a clear day you can see down some peaks in southern New Mexico that borders Mexico, which is another approximately 200 miles.

And I would say approximately eight miles west.

Q How far is the tramway from Rio Rancho?

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A About twenty miles.

Q Can you see Rio Rancho from the tramway?

A Sure.

Q And you can see Albuquerque?

A Yes.

Q And the roadway leading from Albuquerque to Rio Rancho?

A Yes.

Q If somebody went up in a tramway and said they could not see Albuquerque from the tramway, would that sound reasonable to you?

A No.

Q You couldn't miss it, could you?

A No.

Q Not if you had eyes?

A No.

Q You worked for a while up in Milwaukee, isn't that so?

A Yes, sir.

Q The idea there was to help people who had fallen behind in their payments meet their obligations?

A Yes, sir.

Q Do you know that some of these people who fell behind their obligations could have been forfeited.

by the company?

A Yes.

Q Do you know what forfeit means?

A Yes.

Q That means they could have lost what they had put into the property and been cut off entirely?

A Yes.

Q The company didn't do that, did they?

A Not in these particular instances.

Q What they attempted to do was to work with these people, to give them an accommodation, right?

A Mr. Stolzman did, yes.

Q Is he the only one you know about?

A Yes.

Q He is the only one you worked for?

A Right.

Q But you have no reason to believe that that wasn't company policy throughout the whole nation, do you?

A No.

Q By the way, did all the tours go to the tramway?

A Yes.

Q That was part of the showing of Albuquerque?

A Yes.

Q All the tours went to the northeast section of Albuquerque?

A Yes.

MR. [illegible]KIN: I have no further questions, your Honor.

THE COURT: Mr. Fleming.

MR. FLEMING: Just a f[illegible], your Honor.

CROSS EXAMINATION

XX BY MR. FLEMING:

Q Mrs. Miller, do you own a home?

A No, we do not.

Q Rent?

A Yes.

Q You testified you were told not to mention the size of Rio Rancho to homesite owners coming on tour.

A Yes.

Q Those homesite owners, as a matter of fact, each and every one of them, was actually driven out on to the property, were they not?

A Yes, they were.

Q And shown their piece of land?

A Yes.

Q Wherever it was located on the property?

A Yes.

Q Have you been back on the property?

A Yes, I have.

Q Is it fair to say that you can get a fair feeling of the size of the property by driving through the property?

A Not to me, but I'm not good at judging distances.

Q It does not appear large to you as you drive through it?

A Yes, it appears very large to me.

Q Very well.

And that is because you are there and you are looking at it?

A Yes.

Q Am I correct that on most of the tours that you handled -- you have talked about ATC. Putting ATC aside, are the other tours you handled, homesite owners were allowed to travel around by themselves?

A Yes. There was not very much time, but they were allowed to.

Q They were not discouraged from going off on their own?

A No.

Q As a matter of fact, there was a view -- wasn't it your view that the more people that went around Albuquerque the more favorably they would view the entire matter?

A It was my view, yes.

Q Having lived in Albuquerque for a substantial period of time, is that correct?

A Yes, sir.

Q You testified at least in connection with one ATC tour, a person who had cancelled was taken back to a motel downtown rather than to the rest of the tour which was having a drink or something at the Panorama Inn, is that correct?

A Yes, having lunch at the Panorama Inn.

Q So at least on this occasion, a person who had cancelled spent the afternoon in the motel downtown in Albuquerque?

A Or shopping.

Q Or shopping.

I take it, though, they had dinner with the tour that night?

A Yes, sir.

Q And remained with the tour thereafter?

A Yes.

Q And that incident happened only in connection with ATC?

A With the New York tours.

Q With regard to the rest of the country, the tours from the rest of the country had no such experience?

A No, not that I am aware of.

Q Did you handle tours from Europe and Asia?

A Yes.

Q Any such experience with those tours?

A No.

Q Is it fair to say, then, as a matter of practice, looking at the sale of Rio Rancho land on a national and international basis, that as a matter of practice people who came out on tours were not discouraged from walking around?

A Would you repeat the question for me?

Q I say, is it fair to say that viewing the sale of Rio Rancho land as a whole, that is, nationally and internationally, taking all the tours as a whole, that the practice was to let people move around if they wanted to?

A Yes.

Q See what they wanted to see?

A Yes.

Q Not to segregate them if they cancelled?

A Are you still asking me about the other tours rather than --

THE COURT: Pardon me.

I think you fuzzed it up a bit. I have the same problem the witness has.

Are you talking now about the segregation of persons who cancelled and then were not allowed to return to the group unitl evening?

MR. FLEMING: Until dinner, yes, sir.

THE COURT: I think the witness was led astray. I think everybody was.

MR. FLEMING: I apologize.

THE COURT: Start off again.

Q I am talking about viewing the tours as a whole, whether they came from the northwest of the country or the north or Europe or Asia, wherever, viewing the tours as a whole, am I correct it was not the practice to take someone who had cancelled and take them back to their motel for the afternoon or let them shop for the afternoon away from the rest of the tours?

A It was not company policy.

Q That company policy was just the opposite?

A Yes.

THE COURT: Any redirect?

MS. HYNES: A few questions, your Honor.

REDIRECT EXAMINATION

XXXX

BY MS. HYNES:

Q Mrs. Miller, you described an even exchange for Judge Metzner as a half acre for a half acre with no additional payment of money.

What are the size of the lots in Corrales Heights?

A A quarter acre.

Q So there can be no even exchange into Corrales Heights, is that correct?

A As far as I am aware of, no.

THE COURT: That was not my question, Ms. Hynes.

MS. HYNES: That was my followup question, Judge.

THE COURT: You are basing your question on what I asked her and I was not asking her that.

MS. HYNES: I was just trying to lay the foundation, your Honor, for that question.

THE COURT: Go ahead.

Q To your knowledge, prior to your leaving the company -- withdrawn.

To your knowledge, up until the time you left the company, was there an additional charge for an exchange into Corrales Heights?

A Yes, $1500.

MS. HYNES: I have no further questions, your Honor.

THE COURT: All right.

You are excused.

(Witness excused)

THE COURT: Next witness.

MR. DEVORKIN: The government calls Darlene McCorkle.

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DARLENE MC CORKLE, called as a witness, being first duly sworn, testified as follows:

DIRECT EXAMINATION

SSSS

BY MR. DEVORKIN:

Q Mrs. McCorkle, please keep your voice up so everybody in the room can hear you.

Where do you live now?

A In China Grove, North Carolina.

Q How long have you lived there?

A About two and a half years.

Q What do you do for a living now?

A We 00 I farm and we also have a wholesale Turquoise jewelry business.

MR. FLEMING: I am sorry, I didn't hear that.

THE COURT: Wholesale Turquoise jewlery business.

Q Do you have a family now?

A Yes, I do. I have four girls, aged 14, 11-1/2, 7 and 15 months old.

Q And how old are you?

A I'm 33 and a half years old.

Q Did you ever work for Rio Rancho Estates?

A Yes, sir, I did.

Q When was that?

A From April of 1970 through October of 1972.

Q What was your last name at that time?

A It was Wilkinson.

Q Have you since remarried?

A Yes, sir, I have.

Q What was your first job for Rio Rancho Estates?

A I was an OPC solicitor.

Q And after that did you have any other job?

A Yes. I helped as a tour guide for a while in the OPC department and I was also OPC supervisor.

Q When were you OPC supervisor?

A From about -- I was officially OPC supervisor from about August through November, but I filled in that position from about June through August.

THE COURT: Of what year?

THE WITNESS: Of 1972, sir.

MR. DEVORKIN: I am sorry, your HOnor.

Q Mrs. McCorkle, when you say you were an OPC tour guide for a while, that is distinguished from flight tour that would come into the property at times, correct?

A Yes, sir.

Q Just before going to work for Rio Rancho Estates, what were you doing?

A I worked as a consultant in an employment agency. I was a personnel consultant.

Q And how long had you lived in Albuquerque before you went to work for Rio Rancho?

A I came back about the 1st of November of 1969.

THE COURT: Had you lived there before?

THE WITNESS: Yes, sir.

Q When was that?

A From 1947 through 1961 and then I left in 1961.

THE COURT: You came back when?

THE WITNESS: The 1st of November of 1969.

THE COURT: Thank you.

Go ahead.

Q Between 1961, when you left, and whenyou came back in 1969, did you ever visit Albuquerque?

A Yes, sir. I came back for three months in the summer of 1963 and I also came back for a week or two aboutevery two years during that time.

Q Are your parents living in Albuquerque?

A Yes, sir.

Q Do they still live there?

A Yes, sir.

Q When you worked for the employment agency, did you have any contact with Rio Rancho Estates?

A Yes, sir, I did.

Q What was the nature of the contact?

A A man by the name of Wayne Riggs, who was the OPC supervisor, called and placed a job order with my employment agency.

Q What do you mean by a job order?

A That's how you employ people, through a job order. You call and give a job order and describe what you are looking for, then the employment agency sends you that type of person.

Q What position was he hiring people for?

A For an OPC solicitor.

Q Specifically, what criteria, if any, did he give you for the job of OPC solicitor?

A The job order was for a woman, aged 25 to 40 years old, good looking. They wanted either divorced or widowed, preferably with several children, and term used was "hungry".

Q Does the term "hungry" have any meaning in the employment agency trade or business?

A Yes, sir, it did there. It mean that --

Q What did it mean to you?

MR. FLEMING: No. Wait a second.

I am sorry, Your Honor. Her answer was it did there. The question was not there. I object to it.

THE COURT: I will still take it.

MR. FLEMING: Oh, all right.

Q What did you mean there, in Albuquerque where you were working?

A Yes.

Q What did that term mean to you?

A Well, it meant someone who had to work. In other words, someone who is reliable, do a good job and needed the job; somebody, you know, that would go ahead and work, had responsibilities that they had to take care of.

Q Did there come a time that you went to work for Rio Rancho?

A Yes, sir, there did.

Q And in what position did you initially go to work there for?

A As an OPC solicitor.

Q Who hired you?

A Wayne Riggs.

Q What was your own personal situation at the time?

A I was divorced, I had three children that I was the sole support of.

Q And how were you compensated initially when you went to work for Rio Rancho?

A I was paid $80 a week plus $3 per unit.

Q What do you mean by unit?

A That was a married couple or a qualified single, meaning a divorced, a widowed person or a never married person, who took our tour on the OPC department.

Q A unit was someone or a couple that you solicited for Rio Ranch Estates?

A Yes, sir.

Q Would you just briefly describe what the OPC program was when you came to Rio Rancho?

A We obtained units which were tourist, off the street, out of motels, hotels, out of the Old Town area, out of shopping centers, anywhere where tours went, we went there and we talked these people -- we solicited off the street and talked them into going on a tour of Albuquerque, it was a bus tour, and it took them on a tour of Albuquerque, it took them on the Siandia peak tramway, then it took them to the Panorama Inn where they were fed lunch and given a sales presentation.

Q First of all, how did you pick out tourists on the street? How did you determine the people you were looking for were tourists?

A Well, that was pretty easy, because tourists look around and they carry cameras and their children are always real nicely dressed, with local people take them like they are. But tourists, like, buy new clothes, you know, and they just had about a different look about them and after two weeks you would spot them, you knew them immediately.

If you ever made a mistake and he was not a tourist you just shook their hand and said, "Well, you don't need the tour because you are a local person," and then left.

Q Which area did you work initially?

A I worked the Old Town area.

Q And what is Old Town?

A Old Town is a segment of Albuquerque that has been set aside by the historical society and its the original old town part of Albuquerque, New Mexico.

It is a plaza surrounded by stores.

Q Is it fair to say it is a tourist attraction?

A The biggest.

Q Did you receive any initial training or instructions about what you were supposed to do?

A Yes.

Q Who did you receive it from?

A From Wayne Riggs and a woman who was his assistant by the name of Ceil Greenway.

Q Briefly, what were their instructions?

A Well, as brief as I can, I was instructed with a pitch. This is a thing that you said. It was something we learned verbatim. And you pitched the people.

You had a little set thing you said to interest them to go on the tour.

Q What did you say to the people?

A I said, "Hello. My name is Darlene Wilkinson."

THE COURT: I am getting ready to go on the tour.

THE WITNESS: Okay. If you really want to go, I'll really put you on.

Okay.

I would say, "Hello, I'm Darlene Wilkinson. I'm from Rio Rancho, and I would like to invite you to go on our free tour of the Albuquerque area."

You would say, "What for?"

And I'd say, "Well, I want to see you on this tour and I'm going to take you to every interesting spot in the Albuquerque area. We are going to take you up central, show you the University of New Mexico. You are going to ride on the Siandia peak tramway. I'm sure if you drove in you saw signs advertising it, and if you flew in there was a tramway that went up the mountain that had the longest span in the United States.

"We are going to let you take this with your family free, and then we are going to serve you lunch at the Panorama Inn."

Then you would say, "What do I get all this for? What's the catch?"

And I would say, "Well, there isn't any catch at all, sir. We just want to take you and your family and show you what has happened here in Albuquerque and the Albuquerque area over the last ten years and this is our opportunity to show the tourists who are traveling through what is going on in New Mexico, and we are going to serve you lunch at the Panorama Inn and you will be shown a short movie of about fifteen minutes called The West Side Story, but I'm sure you won't mind seeing that one. I'm going to give you about a $10 tramway ride. Would you --

And you say "Yes."

Then I say fine and I write you out a ticket and I hand it to you and off you go.

We have a big tour bus over at the curb and I show it to you. I say it will load in fifteen minutes or a half hour or whenever the tour is leaving.

That's about what I said verbatim.

MR. RUBINO: Are we ready to leave?

THE WITNESS: Are you going?

THE COURT: It's about ten mintues to five and I don't think we can do it now.

Q Did you mention there would be any kind of sales presentation at the end of the tour?

A Not unless I had to.

Q Did you mention Rio Rancho Estates as opposed to Rio Rancho?

A No, sir, no.

MR. ARKIN: Excuse me.

Q Were you given a set of numbers of --

MR. ARKIN: Your Honor, I don't undersatnd that question.

May it be repeated or reframed?

THE COURT: Reframe it for Mr. Arkin.

Q Were you given any insructions about whether you were to indicate to these tourists that you that you worked for a development called Rio Rancho Estates?

A We were told specifically not to. We were told to just say your name and you are from Rio Rancho and go right into the Albuquerque area, because that way you would scare them off if they knew they were going to get a sales pitch.

So by leaving that out and by not telling them what was really going to happen, you know, they kind of got the impression that you were from the Chamber of Commerce or something, you know, and we just left it that way.

MR. FLEMING: I move to strike her answer, the last part, what impression they got, Judge.

THE COURT: Overruled.

Q Was there a set number of units that you had as a goal or that you were supposed to get for the particular meal involved?

A I worked Old Town and for me specifically, yes, there was.

Q What was that?

A I had -- I booked at least ten units per meal. I booked for lunch and I also booked for dinner.

Q Let me see if I have it straight.

In the morning you booked people and you took them on a tour and after the tour you brought them for lunch at the Panorama Inn?

A No, sir, that is incorrect.

In the morning, between 10:00 and 12:00 o'clock, I booked for lunch. We fed them there at the Panorama Inn first and then took them on the tour of Albuquerque.

Q All right.

When did they go on the tram?

A After they had already had thelunch and the sales pitch.

Q Okay.

What did you do in the afternoon?

A In the afternoon, from three until five, I booked for the next tour, which was first taken on the tour and then taken to the Panorama Inn and served the dinner and got the sales pitch last.

Q They went on the tram before dinner?

A That group did, yes, sir.

Q Were there other OPC girls or solicitors working at the same time you were?

A Yes- sir. Approximately ten of them.

Q The same times of the day?

A No, sir. They worked in the afternoon and booked for a morning breakfast tour.

Q Did they also work in the evening?

A Well, I mean afternoon, I meant they started at 3:00 o'clock in the afternoon and they worked until about 9:00 at night, you know, through that time.

Q That was for a breakfast the next day?

A Yes.

Q At Rio Rancho?

A Yes. The tour first and then they were served -- there, again -- they had two tours. May I explain?

Q Sure.

A Okay. They had a breakfast tour. You see, we were booking anywhere up to 40 to 60 people per day -- units out of the motels, so they split them up into groups so some of them were served breakfast first at the Panorama Inn and given the sales pitch and taken on the tour so we could accommodate all these people, and while this group ate, some of them were taken on a tour first and then brought in to eat.

So some were served breakfast and some were served lunch.

Q Were there any sales meetings or training sessions that were held for OPC solicitors?

A Yes.

Q How frequently were those sessions held?

A On a daily basis.

Q When were they held usually?

A In the beginning they were held in the La Placeitas in Old Town where I worked.

Q Is that a restaurant down there?

A Yes, that's where we fed lunch for the Old Town.

Q What was the purpose of the meeting of the OPC solicitors?

A Well, this wasthe time that was used to generate enthusiasm for people to go out and gather units and if he had any problems we went over the rebuttals so that, you know, if people had -- excuses for why they couldn't go on our tour, this was the time we had set things we learned and we kept going over them so it would be fresh in your mind and you would be all enthused to go out and work that day.

Q Who ran these meetings generally?

A The OPC supervisor.

Q Were you given at any time criteria for selection of your units?

A Yes, sir.

Q What were the criteria?

Withdrawn.

Who gave you the criteria?

A The supervisor at that time, Wayne Riggs.

Q And what were the criteria?

A The criteria was that they didn't -- well, they didn't want school teachers, they didn't want preachers, they didn't want Mexican American decent from the New Mexico area and -- let's see. Preachers -- and lawyers was the fourth one.

Q Did anybody explain to you why those categories of people were not preferred?

A Yes, yes.

THE COURT: Let me see if I understand something. How would you know?

THE WITNESS: Well, do you mind, sir, if I tell you?

THE COURT: Well, they may mind. I mean, those are the fellows out there.

You said you went up and moved right into this and didn't tell them what it was all about and you required an expertise as to whether a person was a tourist or not.

THE WITNESS: Right.

THE COURT: What I want to know is how you acquired an expertise as to whether they were a school teacher or a lawyer or --

THE WITNESS: After you have booked your tour, you overbooked each tour, you booked about thirteen people, thirteen couples.

THE COURT: Thirteen units?

THE WITNESS: Right, so you have a little leeway and some won't show up or some you bumped.

After you got the full tour booked -- if you didn't have enough, it is better to send a school teacher or a lawyer to fill up the tour -- you would go around and youwould talk to these people.

THE COURT: In the bus?

THE WITNESS: They were waiting for the bus.

If they said they were a lawyer, for instance, you would say, "Well, we know you have such a busy schedule and I'm sure you are here with your family and you have a limited amount of time so let me give you this free tram pass and you can just take your family on the tram and you can go on."

A school teacher we did the same thing. A Mexican American from that area, we also did the same thing with them.

We said, "Let me give you a tram pass. You don't have to bother with the tour and you can ride the tram at your convenience at any time you want to."

And preachers were real bad. You got them off quick.

THE COURT: But you got in many instances --

THE WITNESS: We knew and kept notes on those people who were going on the tour. That was part of the job.

Q Did Mr. Riggs or anyone else explain to you why those categories of people should not be brought on the tour?

A Yes.

Q What was the explanation?

MR. FLEMING: I object. I am intrigued, your Honor, but I object.

THE COURT: Overruled.

A Well, let's start off with preachers.

How do you sell a preacher an investment for twenty -- for ten years when he thinks the Lord is coming any day, you know. I mean, it's kind of hard to do, you know.

THE COURT: On that note, we will adjourn until tomorrow morning at 10:00 o'clock.

(Jury left the courtroom)

THE COURT: I think we have had enough testimony on the pitch regarding Albuquerque surrounded on three areas and a description of what the three areas are and the growth is only toward Rio.

We have had 22 witnesses so far. I think everybody has told us that and I can repeat it better than the witness can, so I want no more testimony in that area.

We have had five witnesses who have detailed the presentation and procedures on property day. I don't want any more of that.

On the main inducement investment, I don't need any more of that. I have had 22 witnesses who have told me that. The pictures show it, the pitches include it and anybody who brought through a dinner or went through a property presention we now know was told about it, so I don't need that any more; and, lastly, I don't need any exchange privilege for an exchange in Corrales Heights. That has been done ad nauseum.

MS. HYNES: With respect to the last item, the government will call and intends to call this week, weather permitting -- the weather in Albuquerque has been very bad and people --

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THE COURT: You better not say that in front of this jury.

MS. HYNES: I have no intention of saying that in front of this jury.

But in any event, there are witnesses that the government will call who are residents of Rio Rancho and who live in Corrales Heights and who have exercised that exchange. That has not been a witness who has been put on the stand who has in fact --

THE COURT: What will they have to say in addition to what we already know?

MS. HYNES: They have to explain what their experience was.

Your Honor asked a question of a witness, Mrs. Miller, on the even exchange, is it half acre for half acre and continue your payments. The fact is there are other things to be brought out. For example, when somebody exchanges into -

THE COURT: I didn't mean to include Corrales Heights. That is why when you started your redirect I said that is not what I was inquiring about.

MS. HYNES: Let me just make the point.

THE COURT: I am excluding Corrales Heights from that.

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My question was, could you have an even exchange outside of Corrales Heights? That's what I was directing my question to and not the Corrales Heights, which obviously on its face is not an even exchange.

But I have had ten people tell me the Corrales Heights exchange provision. Now, what more are you going to bring out regarding Corrales Heights aside from what has already been brought out?

MS. HYNES: Your Honor, one, that Corrales Heights was the only available area for exchange for a period of time and that these witnesses will testify that they did exchange into Corrales Heights and it was the only area that was available for exchange.

That has not been testified to by a witness who has, in fact, experienced it. Other people talked about if that was available.

THE COURT: All right. I will give you two witnesses in that area.

What else?

MS. HYNES: Your Honor, one other point.

There will be other testimony generally dealing with the exchange privilege which has not been gone into at all by consumer witnesses.

The point that I was trying to clarify for

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your Honor was not -- it really didn't relate to Corrales Heights and the exchange privilege, but the point is when somebody exchanges, they must pay in full for the lot that they are going to give back to the company before they then go into a building area.

In other words, there are not payments that continue on the lot that they give back.

These are some of the other things --

THE COURT: Say that again.

MS. HYNES: If somebody has a lot in Unit 24 and he is making payments on that lot, the contract term is for seven years or nine years, and he has made payments for three years and decided he at that time is going to move to Rio Rancho, he must pay up that lot in Unit 24 in full before he can exchange into any building area, whether it is an even exchange or not an even exchange area.

There are these kinds of things, your HOnor, which really we must bring out to give the full story.

We do not expect to call many witnesses on it at all. Basically, our expectation is to call I believe it is two witnesses who did transfer or three witnesses who transferred two into Corrales Heights, one into a different area, then we will call witnesses whodeal really on a very different level who dealt with the company and were involved on the company level with setting up the exchange privilege.

THE COURT: I don't understand what you mean by that.

I have now had people out there, first of all, practically every purchaser has testified as to the exchange privilege and what it meant.

You are now saying there was more to that than what every purchaser so far has told me, and you have had twelve purchasers.

MS. HYNES: Because none of those purchasers actually exchanged. But there is another whole side of it.

THE COURT: Then you have had people who testified on what went on out there.

You have had Masone, you have had Monaco, you have had Potter, which is three. Couldn't they testify as to what the privilege --

MS. HYNES: Your Honor, what I am really directing my comments to is the situation where the government wants to set out how much land has been set aside in these exchange areas. That is certainly part of our proof in this case. That there was not enough land

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that was set aside in the exchange area to allow everyone to exchange, every purchaser of a homesite lot to exchange.

THE COURT: Now you are getting off the point.

MS. HYNES: That deals with exchange and there will be a witness who will talk about that.

THE COURT: That isn't what I am asking you, is it?

MS. HYNES: What is it that you are asking me?

THE COURT: You don't know?

MS. HYNES: Your Honor, I am trying to clarify witnesses we will call on exchange.

THE COURT: I don't know why I need any more witnesses on the exchange provision since you have already given me at least ten who have explained what the exchange provision means.

Now you say you have more witnesses to show that there was more to the exchange provision than Masone, Monaco and Potter have told me or even been asked, plus the purchasers.

MS. HYNES: Well, your Honor, the witnesses we are calling which are really exchange witnesses are the ones who actually exercised the exchange.

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Certainly for victim witnesses who the government calls, if they bought knowing or understanding and believing that they had this even exchange and then went down and found out that it was not an even exchange, it was going to cost them more money, that testimony takes about three minutes to bring out.

It certainly is part of the misrepresentations and misunderstanding that these people had and the government is entitled to bring that out.

THE COURT: I said I would give you two witnesses of that type.

Now you went into something else about somebody who is coming down to testify about something I didn't ask you.

Now tell me about it.

MS.HYNES: Your Honor, that also deals on the issue of exchange, and that is someone who will testify with respect to how much land was set aside for the exchange.

THE COURT: I will take that. That is not what I was talking about when I spoke about the limitation, Ms. Hynes.

All right.

I still add here, except for the exceptions

I have made, to the rulings I have made.

MR. DEVORKIN: Your Honor, can I just clarify one thing because Mrs. McCorkle is on the stand and the subject matter of her testimony would cover one of the things your Honor just said.

THE COURT: I am not going to obviously stop her direct as being included in what I just said. You may continue as though I hadn't made these rulings as far as she is concerned.

MR. DEVORKIN: Fine.

THE COURT: But I add her in as to what was going on out there.

MR. DEVORKIN: I understand.

THE COURT: You have had three tour guides now. From them and from Monaco, Potter and Masone, I can get up and tell you what they were told and what they were telling everybody, and so can the jury, so we are finished with that.

MR. DEVORKIN: I understand that, your Honor. Her testimony is going to be almost strictly about OPC, and that's why.

(Adjournment taken to November 30, 1976, at 10:00 o'clock a.m.)

WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
Leon Fox (Resumed)	2704	2711		2734
Selma Switt	2735	2754	2798	
Linda Davis	2804	2827	2838	
Patricia Candace Miller	2840	2889	2910	
Darlene McCorkle	2912			

EXHIBIT INDEX

Defendants Chester Carity and Daniel Friedman	Identification	In Evidence
CM	2720	2722
Government		
158-B,158-C		2747
158-K	2752	2[illegible]
158-A		2753
1402	2810	2811
Defendants Howard Friedman and Henry Hoffman		
CN	2765	
CJ		2767
CO	2768	
CQ	2777	

AM gtjb

UNITED STATES OF AMERICA

v.

76 Cr. 644

AMREP CORPORATION, et al.

November 30, 1976
10:00 a.m.

oOo

(In open court; jury present.)

x DARLENE McCORKLE, resumed.

THE COURT: You may proceed.

MR. DEVORKIN: Thank you, your Honor.

THE COURT: You were just telling us how you could tell the difference between preachers, lawyers and school teachers.

THE WITNESS: Yes, sir.

XXX DIRECT EXAMINATION (Continued)

BY MR. DEVORKIN:

Q Mrs. McCorkle, do you recall testifying yesterday that one of the criteria of soliciting tourists for OPC presentations was that you weren't to solicit Mexican-Americans from New Mexico?

Do you recall that testimony?

A Yes, sir.

Q Were you given any instructions by your superior about why you weren't to solicit Mexican-Americans from New Mexico?

A Yes, sir, we were.

Q Whatwere those instructions?

A We were told by Mr. Riggs if we solicited Mexican-Americans that it was hard on the sales room, because most of these people who had lived in New Mexico knew the price of land there and so they would create problems when they were told, you know, like a half acre was such and such a price.

They would say, "Well, my grandmother sold some land and she only got $100 an acre for it," or something like that, so it really created a problem in the room, in the sales room.

Q I believe you said that the meals, the dinners and the luncheons, were held at the Panorama Inn at Rio Rancho and at a restaurant in Old Town?

A Yes, sir.

Q Did you attend these meals, these luncheons and dinners?

A Yes,sir.

Q How would it occur that you would attend?

A Well, after I would book a tour, talking about the lunch, after I would book the tour, then I would talk to the people and I would get all the information I could, then I would go into the sales room where they were having a sales meeting and I would tell the sames manager of the room or the room manager everything I could find out about the people, and then at that time I would go back out and I would greet the people as they came in.

They would have tickets. We would write tickets for them. They would hand me the ticket and I would get them all lined up and tell them where the back room was and things like that.

Then I would knock on the sales door -- the door is kept closed -- I would knock on the sales door and the sales room manager would come to the door, and I would introduce these couples to the sales manager.

Then he, in turn, introduced them to the salesmen.

Q Were the salesmen called salesmen or were they called something else?

A They were called land consultants.

Q Then would you stay around for the actual meal and sales presentation?

A Yes, sir.

Q How often did you attend these presentations?

A Daily. My lunch was free by eating in the sales room, and so that's just where I ate. I ate in the sales room.

Q How many days a week?

A I worked seven days a week.

Q Was any particular format used at these OPC sales presentations?

A Yes, sir.

Q Was that format used at all the presentations you attended? Was it the same format?

A Through all theyears I worked for them it was the same.

Q Just briefly, what were the outlines of that format?

A Well, the sales manager met the people at the door, then he introduced them to the salesmen, the land consultants.

Thepeople sat down with the salesman at individual tables or sometimes they used long tables, depending. There were a lot of variables about how many, what time of day it was and things like that, you know, whether it was breakfast, lunch or dinner.

Then they had a man who did like a comic routine and he was not thesales manager and he was not, you know -- usually he was a separate man. He was one of the TO men. He went out to the front and he loosened the people up with a comic routine. He told jokes and kidded them about being locked up in the room, they told them they couldn't leave because they locked the door, you know, stuff to loosen them up.

Then they served them lunch, after the comic routine.

Then after that they had the movie called The West Side Story and they started it, and it ran for -- I don't know, from 10 to 15 minutes, maybe.

After that then the sales manager walked up to the front of the room or the room manager, we will call him, and he walked up to the front of the room and he had a set spiel thathe gave and it didn't matter if it was him or -- they used several of these speakers and it was a set thing that was said. It was almost memorized word for word.

And after he gave that, or in the midst of giving this, then they had slides and they had a little slide projector put up towards the back of the room and then one of the TO men got up and turned the slide projector so it all ran smoothly, so there wasn't any delays or anything, because it was important to keep it running well.

Q Would you please relate as best you can recall it what the manager said during thepart of the program that you have described as the sales presentation after West Side Story?

A Well, he, again, went into the fact that Albuquerque was just bursting at the seams and that this was one of the best cities in the southwest, and he quoted the from different things that it was a known fact that the southwest was -- the people from the east were going to migrate to the southwest and Albuquerque was one of the few very choicest spots in the nation because it had an underground water -- unlimited underground water supply and it had a wonderful climate andthings like that.

Then he had the projector and he turned on the projector, or they did, and it showed, like, three pillars and it talked about these three or four pillars and they had -- one was -- I think the first one was stocks and bonds and the next one was insurance and they had savings and loan and the last one was land.

Then he talked -- he would ask out to the people, he'd say, you know, "Who out there has -- who looked at thestock report this morning?"

Then somebody might raise their hand, and if no one did, then a salesman would say, "Well, it rose or it fell," and so he said, "Well, now, if you had invested a set amount of money into this, you would come up with so much."

Then he would -- "Does anybody have an insurance policy which is making you money?"

They would go through.

And, "Who has money in a savings account and who is getting the most interest," you know.

Some would say 6 per cent and some would say they had a CD for four years or something, you know, just whatever they had, whatever the people there had.

Then when he got through with this, then he would tell them, "Over the past so many years, if you invested in land, land has gone up this per cent, so you can see that all the rest of these things are a very bad investment in comparison to land."

They would quote Will Rogers and a few other people like that.

Then he would turn the program over -- well, he would mention the fact that they had, you know, a thing that said Albuquerque was growing and that there was no way -- that Albuquerque was contained on all three sides and there wasn't anywhere for Albuquerque to go except to be funneled right through Rio Rancho Estates.

That was the most important part of the whole talk, because, see, this was when they -- here all the talk has been about Albuquerque growing, it was the content of the talk, and how it was just bursting at the seams, and then it showed, you know, here was Albuquerque and there wasn't anywhere for it to go except right through this little tiny place, Rio Rancho Estates, and he said, you know, if you are, like -- I think he used Carnegian, you know, he sa-d, "Will Rogers said find out where the people are going and get there first and buy the land and you will be a multi-millionaire." So he used that as kind of his last statement. And he said, "You now have that opportunity today."

Then he said, "I'm going to let theland consultant whois sitting with you talk to you about it."

That's whathe said, basically, you know. There was a lot more.

(Continued on next page.)

Q When he finished his presentation, what happened next, if anything?

A Then the salesman jumped up or the land consultant who was sitting with a couple or a single and he would jump up and he would raise his hand and say hold, lot so and so.

THE COURT: We have heard this 15 times. Can't we get down to something that's new?

Q Mrs. McCorkle, didyou ever attend sales meetings with the salesmen before or after these presentations?

A Yes.

Q Which was it, before or after?

A It was before, the sales meetings were held before they came in. Sometimes they would have meetings afterwards, but they weren't really called a sales meeting. They just had what little, you know, about what happened.

Q Listen to my question and please just answer my question.

Did you ever hear holds discussed at sales meetings?

A Yes.

Q Who was participating in the discussion?

A Thesalesmen, at that time thesales manager was Larry Hoggins.

Q What do you recall about those discussions?

A The salesmen didnot like having to jump up and yell hold.

Q What did Mr. Hoggins say?

A He told them it was a set format and they had to go by what the program was and that if they didn't like it, you know, this had been very effective and they had been using it for quite a while and this is what had to be done.

Q Now, did you ever hear sales managers or salesmen discuss at these meetings before the presentation which property they would place a hold on?

A Yes.

Q What was said about that?

A Well, these salesmen just had several pieces of property that they could use. The sales manager had a sheet of paper that he got a list of property on and he would kind of hand out so many pieces to each one and then that way they all had a piece and they knew what they were going to have.

They had one piece and then they had a couple of back-up pieces, too.

Q At these sales meetings was there any discussion about what to do if thecustomer wished to take his contract and review it outside the room or consult with somebody else such as a lawyer?

A Yes, sir.

Q What did you hear about that subject?

A Well, the sales manager told them, they were each given a briefcase when they were hired as a salesman, they were given a briefcase and they were instructed that they were not allowed to ever let a contract go out of the room unless it was signed, unless it was a purchaser. None of the paper work was to ever leave their hands unless it was actually signed.

Q Were there any instructions about what to do if the customer wanted to take the contract out or wanted to see an attorney or someone like that?

A Yes, sir.

Q What were the instructions about that subject?

A Well, the instructions were they had the papers, the papers were to be kept in front of them and if the man got really insistent about well, I want to take it home to show it to my attorney or I want to take it home and read it or something, they took the papers and slid them off the table and the briefcase was left open and they put the papers into the briefcase and closed it and said, I am sorry, Mr. Jones, or whatever his name was, this is a one-time thing and this property has only been given to me for today and I can't sell you this even tomorrow because it is on a master computerized sheet and I am very sorry, but this is a one-time thing. If you are not interested in it today, well then, you are just out of luck. Maybe some other time you will have another opportunity.

Q Generally speaking, at the OPC presentations, how many sales people would there be for each unit?

A One salesman plus there would be at least two TO men in the back plus the sales manager and the fellow giving thetalk in the front, the comic.

Q That was only one unit for each sales person?

A Yes, sir.

Q Is that correct?

A Yes. A unit being a couple or a qualified single. That was correct.

Q Youused the term TO men. What does that refer to?

A A takeover man.

Q What is a takeover man?

A That's a salesman who stayed in the back of the room and when the first salesman couldn't sell them, he would either give a high sign or they did have a set time that he had to sell and then this TO man would go over there and talk to the couple. He would sit down -- there was always one extra sheet left at the table and he would sit down at the table and then he would begin, you know the man would introduce him, the first salesman introduced him and said this is Mr. so and so and then the first salesman got up and he came back to the TO table and he told the sales manager, the other TO man or the comic, whoever was there, I will call him a comic, he was just another salesman, he would tell them what their objections were.

Q Where would you be sitting?

A At the TO table.

Q Approximately how far away from the nearest table with the unit would that be?

A It would depend on how crowded the room was. Normally, say, whatever a table is spaced, I don't know, about four feet or five feet.

Q From where you were sitting were you able to hear the salesmen's conversations with his unit that was nearest you?

A Yes, the back two or three tables.

Q Yes or no?

A Yes, sir.

Q Did the salesman ever receive any instructions at these sales meetings about what to do after the customer signed his contract?

A Yes, sir.

Q What were the instructions about that?

A Well, they were told that as soon as a person signed the contract as a buyer, they were to escort the person out of the room. You know, they got up and they left, the buyers got up with the salesman who they purchased from and they left the room.

Q Did the sales manager give any reason for doing that?

A Yes, sir.

Q What were those reasons?

A He told them they were to remove them from the rest of the people in case somebody in-the room got so insulted and angry and that in that way the buyers would be put aside. They would be taken out of the room and protected from anything that happened.

Q On some occasions I take it from the way you have described it, the tour part up to the tram would occur after the sales presentation, is that right?

A Yes, sir.

Q What, if anything, were the salesmen to do with a customer who had bought but still hadn't taken his tour?

A Well, each salesman was given a private LTD to drive and these salesmen then took this customer and they had his signed contract and they took him on a private tour of their own or else they would give him tram passes that he could use in his own private car. You know, they took him out to Rio Rancho, whichever way it was going to be.

Q Again at these sales meetings, did you ever hear any instructions given about what the salesmen were to do with respect to taking a purchaser to his particular property or what the salesman would say to a purchaser who wanted to see his particular property that he had just bought?

A Yes, sir.

Q What were the instructions about that?

A Well, the sales manager told the salesmen that if the customer, you know, if he insisted on going out there to Rio Rancho and seeing his property, to go ahead and take him on out there, but that to tell him if he said, you know, tell him, you are buying this as an investment.

It doesn't make any difference, you know, where really this piece, plot of land is because you are only buying this as an investment, an investment that the whole thing is going to be, you know, covered over and it doesn't really make any difference where it is.

Q What do you mean the whole thing is going to be covered over?

A Well, the land -- well, that is what he told them. Tell them that you are buying this as an investment. It doesn't make any difference if there are plots here or over here because the whole thing is going to be developed because of this buying push.

That is what they did. What difference did it make where it was located.

Q Were there any instructions about -- what if the customer insisted that he wanted to see his property? Were the salesmen instructed about what to do then?

A Yes, sir.

Q What was he supposed to do?

A He told them to try to take him out there and try to find it.

Q If he couldn't find theproperty?

A He told them to show him something because he didn't want him to get out there and act like he was lost.

Q Now, were there any instructions at sales meetings about what size parcels to sell or selling additional parcels to customers?

A In the OPC department where I worked they really didn't handle additional parcels, but they did hand out -- each salesman got several pieces and they were told always to show them the biggest piece they had because they could always go down, but they couldn't go up.

In other words, to start with the five acre ranchette because you could always go down to a half acre but you couldn't start with a half acre and then start over and sell them a five acre ranchette.

Q From where you were seated in the sales presentation room, what, if anything, did the purchaser get after he had signed his contract?

A He got a manila envelope with all his papers in it.

Q Do you know what was in the manila envelope?

A The papers that the salesman had in front of him, the man signed the papers, the salesman put the papers into a manila envelope and it had a little thing and he pushed it down and he handed it to him andthat's what he got, signed, sealed and delivered, his copy, you know.

Q Did you ever receive any awards from Rio Rancho?

A Yes, sir.

Q When was that?

A In December of 1971.

Q 1971 or 1970?

A 1970, I am sorry.

Q What was the award?

A I was given an award for being the best OPC solicitor that they had.

Q Did there come a time during the year when the tourist business dropped off?

A Yes, sir.

Q When was that?

A From about November through about March even into April.

Q Was there anything different about Albuquerque during those months?

A Yes, sir.

Q What was that?

A Well, it was winter. The weather changed. It was cold and sometimes we had blizzards and it was just winter weather and in the springtime we get really bad dust storms.

Q Were you able to -- withdrawn.

Could you swim outside in the wintertime?

A No, sir.

Q You mentioned previously solicitations that occurred at motels, I believe. Is that correct?

A Yes, sir.

Q Did there come a time when you did that kind of work?

A Yes, sir.

Q Would you just briefly describe what that kind of solicitation consisted of?

A We went to the motels in the Albuquerque area or I particularly -- I had different routes so I actually called on all the motels in the Albuquerque area.

We went up to the motel, it was prearranged that we would be there.

We talked to the motel manager, we got the list of the people who were staying at the motel. If they had a telephone system we called them in their rooms, otherwise we went and knocked on the doors and we talked to them personally and we invited them on the same tour using the very same pitch that I have already told you and we invited them on a tour which was the breakfast tour which picked them up at 8:00 in the morning.

Q Did you have any arrangement with the motel itself that permitted you to do this?

A Yes, sir, we paid them also $3 per unit.

Q Did the OPC program change at all during the winter months?

A Yes, sir.

Q In what way?

A Well, in the fall or early winter of 1970, they started a mail-out program to supplement this OPC program.

Q That is like November and December of 1970?

A Yes.

Q Who first told you about the mail-out program?

A Mr. Jim Wall or Mr. Larry Hoggins.

Q Who was Jim Wall?

A He was the tour director.

Q Who was Larry Hoggins at the time?

A He was the OPC sales manager.

Q What didthey tell you about the mail-out program?

A They told me that -- well, Mr. Wall told me that he had been in touch with New York and New York had sent them a mail-out program which was patterned after the same mail-out program they had used all over the country and it had been very effective and we would implement this in the Albuquerque area and they were hoping that it was going to get the same response it had all over the country.

Q What, if anything, did you do in connection with this mail-out program?

A I supplemented the mail-out program by calling on businesses and I had a girl that would go with me and we went out and called on businesses and invited the employers with their employees to come out to a free steak dinner.

Q At Rio Rancho?

A At Rio Rancho Estates.

Q Did you see -- withdrawn.

What did the other OPC solicitors do, if anything, with respect to the mail-out program?

A They were responsible, they stuffed the letters and these things came pre-addressed except the envelopes were pre-addressed through some kind of a computer type thing, but the actual invitations were not and so they put the right days, you know, in the envelopes to the right sections of town.

(Continued on next page.)

Q Restricting yourself to your own personal experiences when you went soliciting at employers in the Albuquerque area, what was the nature of the response you got from the employers when you requested them to come out to this free steak dinner?

A It was very terrible.

Q What do you mean by that?

A Well, they were not receptive to coming out to Rio Rancho at all.

Q What was the response after the dinners themselves, in other words, how many people were showing up at these dinners?

A We averaged from two to five people a night.

Q Five units?

A Units a night.

Q You were holding one presentation a day at this time?

A Yes. We did have -- at that time we were running complimentary tour in the morning, but there were not enough people on the breakfast tour to actually have a sales room. We had to run it through the winter to keep the motel owners happy.

Q The local --

A One presentation at 7:00 o'clock in the evening.

Q Did you have any discussions with Mr. Wall or Mr. Hoggins about the turnout from the local Albuquerque people?

A Yes, sir.

Q What did they say to you?

A Mr. Wall said we were going to discontinue it because this was an extremely expensive mail-out program, these are really nice invitations and they had been very expensive and the whole thing as a package had been very expensive and that they couldn't believe the terrible turnout that was coming from Albuquerque and they couldn't support, you know, like from two to five people on a free steak dinner without any sales on this type of program.

Q Was the program discontinued?

A Yes, sir.

Q When was that?

A I believe, as best I can remember, it was discontinued about maybe January, the 1st of February, somewhere around there.

Q Turning your attention to the next winter or next fall, again was there a similar program?

A Yes. It was similar, but there were a lot of differences also.

Q Very briefly what were the differences?

A The differences were they had got -- they thought they had a new better idea and they were only going to mail these invitations out to the richer section of Albuquerque and they had purchased some kind of a mailing thing that you buy that tells you just what areas and the names of the people in -- exclusive, the better areas of town. They telephoned them.

Q The next year was the program any more successful than the first year?

A No, it was not called a mail-out program. It was called a telephone program and it was just as bad.

Q In the spring of 1971 did you have an occasion to go back to the Old Town area to repeat the solicitations you had done before?

A Yes, sir, I did.

Q Were you able to continue soliciting in Old Town?

A No, sir.

Q Did you have any conversations with your OPC sales supervisor about that?

A Yes, sir, I did.

Q Who was that?

A Well, I spoke to Jim Wall directly and the man who was then the sales manager named John Dougherty and I spoke to him and Mr. Gene Hendrick was there also.

Q What did they say to you about soliciting in Old Town, if anything, or what did you say to them?

A I explained that I had been down there and I spoke to Dale Elliot who was the owner of the La Placeitas Restaurant.

Q That was a restaurant you used for these presentations?

A Yes.

Q What did you say to Mr. Wall and Mr. Hoggins?

MR. FLEMING: Object to that in that it involves a hearsay conversation with the owner of the restaurant.

A I spoke to him.

THE COURT: She can testify what she said but she cannot give a response as to what the restaurant owner said.

Q You made a report to Mr. Wall or Mr. Hoggins about what the restaurant owner had told you?

A Yes.

Q Did you get a response from Mr. Wall or Mr. Hoggins about your report?

A Yes.

MR. DEVORKIN: On the basis of that I would offer her testimony about what she told these people and what her supervisors responded.

Q What did Mr. Wall and Mr. Hoggins say to you?

A They said not to worry; that they had passed an ordinance not allowing us to come back to solicit on the street because they put so much money into the La Placeitas with the flight tours that they would go down and take care of it.

Q Mr. Wall and Mr. Hoggins?

A Mr. Wall told me that.

Q Did they explain to you why the ordinance had been passed?

A No, sir, I explained to them why the ordinance had been passed.

Q Did you talk to Mr. Wall or Mr. Hoggins at some later date about this?

A Yes, sir. Then they had gone down and they had talked to the Merchants Association.

Q Did they tell you this?

A Yes, sir, and they told me they were not able to change the law, the ordinance that had been passed.

Q Did they explain to you why it had been passed?

A No, sir, I knew why.

Q Now, in 1970 and 1971 did you have any conversations with any of the motel managers or owners about the sales practices of Rio Rancho?

A Yes, sir.

Q Did you report to your sales manager about those conversations?

A Yes, sir.

Q Who did you report to?

A At what time? We changed sales manager almost as fast as we changed salesmen.

Q Did you always report to your supervisor when you had conversations with the managers about the sales practices of Rio Rancho?

A Yes, sir.

Q What did you tell your sales manager and what was his response?

A We just told him that --

MR. ARKIN: May we have some idea of time and place.

Q Let's restrict ourselves to 1970 and 1971. During that period of time --

MR. ARKIN: She only worked there two and a half years. Could you be more precise.

Q Were the conversations basically similar during this period of time?

A Yes, sir.

THE COURT: Let's start with the first one.

Q Take 1970, Mrs. McCorkle.

What did you say to your sales manager about these conversations with the motel owners or managers and what did your sales manager say to you?

MR. FLEMING: I object to that on relevance, your Honor.

THE COURT: Sustained.

MR. DEVORKIN: Your Honor, may we approach the side bar?

THE COURT: You may.

(At the side bar)

THE COURT: Yes.

MR. DEVORKIN: I am waiting for Mr. Fleming since it is his objection.

Your Honor, the witness is going to testify that repeatedly over a period of time she received complaints from motel operators and owners who were engaged with Rio Rancho in this OPC program about complaints they were receiving from their own customers about the high pressure sales tactics that --

THE COURT: That is third hearsay.

MR. DEVORKIN: If I can finish, your Honor. I will explain it.

She is reporting to Rio Rancho, she is receiving from the people she is working with complaints about high pressure tactics. She is reporting these complaints to her superiors. Her superiors are either telling her -- that is putting Rio Rancho and her superiors on notice of certain complaints.

Second of all --

THE COURT: You are telling me they are complaints that are made by X to Y to her.

MR. DEVORKIN: That's right. They are complaints.

THE COURT: I won't let that in, of course not.

MR. DEVORKIN: May I finish?

THE COURT: No, give me some other approach you have got.

MR. DEVORKIN: Her supervisors over the period of time basically told her despite the facts that the complaints increased and the sales tactics became worse that there was nothing they could do, that is the way it was. It was tough luck. If they didn't want to participate they didn't have to.

THE COURT: The objection is sustained.

(In open court)

BY MR. DEVORKIN:

Q Mrs. McCorkle, did you keep going to sales presentations in 1971?

A Yes, I did occasionally, not on a regular basis any more.

Q When did you start going occasionally as opposed to every day?

A When the mail-out program ended, I quit going on a daily basis and I began going -- then that is when I started calling on motels and I would just drop by. If I was there I would go in for lunch and sit in the back. We were able to do that.

Q When the sales presentations that you would go occasionally were they the same as the ones you saw before?

A Yes, sir.

Q Was there anything different about the salesmen's conduct as opposed to the sales presentation in the front of the room?

A Yes, sir.

Q What was different about the salesman's conduct?

A The amount of pressure that was applied on each individual unit.

Q Explain what you mean by that?

MR. FLEMING: I object.

THE COURT: I will take the explanation.

MR. FLEMING: Yes.

Q Explain what you mean.

A The salesmen were a lot stronger in trying to make the sale than they were before. They were a lot harder on them. They also --

THE COURT: Wait, you are going too fast for us. They were a lot stronger now. You have given us the description of what happened.

What do you mean by a lot stronger?

Give us specifics.

A Okay.

THE COURT: We cannot take your conclusion, we have to know the facts and the jury will draw the conclusion.

A Okay. They began pitting the husband and the wife against each other. The tactic now was that they would say something like -- to the wife, they would turn to her and say --

MR. FLEMING: Could I have something specific, if your Honor please.

THE COURT: I think it is specific.

MR. FLEMING: All right.

A They would say to the wife and this was a general thing that all of them used and they would say to the wife, do you mean to tell me that your husband doesn't care enough about you to want to invest in your future. You mean to say that he is not interested in buying this land and giving up a couple of packs of cigarettes for you a month and things like that.

Q Whatother things do you recall that were stronger?

A They were insulting. They would say things like, all intelligent people try to invest in their future and the man would say, yes.

He would say do you agree with that and the man would say, yes. I agree with that. He said do you mean to tell me, I can only assume that you are an intelligent person so I am assuming then because you are intelligent you are going to be signing this and things like that. Putting the man down.

Q What happened in the sales at that time?

A They increased.

Q How do you know that?

A Because I was told that.

Q By whom?

A By the sales manager when they would say we are getting -- keep getting the units because we are making more sales. Get more units.

Q Do you know a man named Irv Roth?

A Yes, sir.

Q When did you first meet Irv Roth?

A In the very early part of the year of 1972.

Q What was his position when you met him?

A He came in as the general sales manager I believe was his title.

Q At Rio Rancho Estates?

A Yes, sir.

Q You say general sales manager. There were a lot of sales managers, I take it?

A Yes, sir.

Q What departments of Rio Rancho were under Mr. Roth?

A All of the sales departments.

Q That included what?

A Flight tours, I believe Eldorado, the model homes area, the flight tours, OPC, all of them. Commercial property, anything having to do with the sales came under him.

Q When he started, do you recall whether or not there was any kind of a sales meeting?

A Yes, sir, there was.

Q Who attended this meeting?

A Anyone having to do with the sales including the secretaries and receptionist, anyone in the sales departments.

Q Did you attend?

A Yes, sir.

Q What, if anything, did Mr. Roth say to the group at that meeting?

A He introduced himself, who he was, and he told us he had been the owner of Roth Realty and because of the excellent job that he had done through the years for Rio Rancho, AMREP Corporation specifically, that they had rewarded him by purchasing the Roth Realty and also appointing him the general sales manager at Rio Rancho.

Q Did they say anything else?

A Yes, sir.

Q What did he say?

A He told us about the practices that he had used at Roth Realty and about how successful that they had been on a national level and that he was now coming to Rio Rancho to make the land consultants and these other sales departments and that he was going to jack up their spirits and all this and how, you know, we were going to have more sales out of the amount of people, the amount of traffic that came through our departments.

Q Will you describe the specific sales techniques that he had used that were successful or that he wanted you to use?

A Yes, sir.

Q What were those?

A He told us about how -- this is some of the things he was saying to the salesmen, he said now some of the things we have done in the early days and we proved it was effective and he said we went out and he said this is what we are going to do now. These small investments out of your pocket will make you $1,000 commission or more. He said the things that they did were to buy arrowheads --

THE COURT: What?

THE WITNESS: Arrowheads.

THE COURT: Buy arrowheads?

THE WITNESS: Yes.

Q What do you mean buy arrowheads?

A You buy them by the gross. They are imitation arrowheads, they look like arrowheads that you would find on the ground. In New Mexico it is artifacts that you find.

Q Indian artifacts?

A Yes.

Q These are not real?

A No, you buy them by the boxful. They are souveniers like, but they look real. If you don't know it, they look real.

Q What did Mr. Roth say about that?

A He offered to give the name of the company to --

Q What did he say he had done with those?

A Oh, he said they had brought them and sprinkled them out on the ground.

Q What ground?

A Out on the property before they took someone to show, and then when you had these sprinkled out and you showed the property they would find these souvenirs, that and cactuses, that and miniature cactuses.

Q Did he say who had given him this new job at Rio Rancho?

A He just referred to it as New York. That was the common practice there. All of us just said "New York."

Q After Mr. Roth came to Rio Rancho, were you still working the motels soliciting for OPC?

A Yes, sir.

Q Did you ever make any complaints to Mr. Roth?

A Yes, sir.

Q What did you say to Mr. Roth and what did he say to you?

A Collectively, the OPC girls and our supervisor, Madeline Betts, all went to Mr. Roth at about anywhere from two weeks to a month or so after he arrived there and told him about the amount of complaints.

I have specifically told him that I -- the complaints were getting so bad that I couldn't handle them, and I'd always be able to handle all of my complaints myself, and it was to a point where could no longer handle them and wasn't there something that he could do.

I mean, that was our livelihood, to be able to call on these motels, and if these people --

MR. FLEMING: I object to this, if your Honor please.

THE COURT: Sustained.

MR. FLEMING: I ask that that testimony be struck.

THE COURT: Strike it.

Q Did Mr. Roth -- withdrawn.

Did there come a time after Mr. Roth came there after you had conversations with him that he gave you any instructions about your future attendance at OPC sales presentations?

A Yes, sir.

Q What were his instructions?

A He told us he no longer wanted us in the sales room at all becaus he didn't want us bothering the salesmen and complaining to them about the high pressure tactics.

Q Did your job position change at any time during this period?

A Yes, sir.

Q When was that?

A The early part of the summer Madeline Betts became emotionally ill or she became ill and she left her job there and I took over, not officially, but I did fill the job as OPC supervisor for about a month and a half, and then officially they made me OPC supervisor in July or August.

Q Who did you report to --

MR. FLEMING: Do you have the year?

Q Is this 1972?

A '72.

Q Who did you report to?

A Mr. Dev Hill, who was then the sales manager of OPC.

Q Did he have any contact with Mr. Roth?

THE COURT: Wait a second.

He was the sales manager of OPC?

THE WITNESS: Yes, sir.

THE COURT: What was your title?

THE WITNESS: OPC supervisor.

Q You were supervising the solicitors?

A Yes, sir.

Q This gentleman was in charge of the whole OPC program?

A Yes.

Q Do you know Mr. Greenstein?

A Yes, sir.

Q Who is Mr. Greenstein?

A He was in charge of the salesmen. He was like the sales manager. He wasn't the general OPC manager, he was just like the room manager they called them.

Q The OPC sales manager?

A Yes.

Q When did he come to Rio Rancho, if you recall?

A I believe around -- sometime in the latter part of June, the first of July, about then.

Q Of which year?

A 1972.

Q Did you have any conversations with Mr. Roth about Mr. Greenstein?

A Many.

Q About sales practices with respect to Mr. Greenstein?

A Yes, sir.

Q What did you say to Mr. Roth and what did Mr. Roth say to you?

MR. FLEMING: I object.

THE COURT: Oh, if she observed these practices, she is testifying firsthand, isn't she?

MR. FLEMING: If that is the basis of her testimony, if your Honor please.

THE COURT: Ask the question and find out.

MR. DEVORKIN: Let me clarify that, your Honor.

Q Did you go to any of the sales presentations at which Mr. Greenstein was involved?

A Yes, sir.

Q Were these OPC presentations?

A Yes, sir.

Q This is during the time when you were going to them occasionally?

A No. I was only allowed in because I was the supervisor and I did go.

Q This was after Mr. Roth had instructed the OPC solicitors not to go?

A Yes, sir.

Q But you were a supervisor?

A Yes, sir.

Q You went on that basis?

A Yes, sir.

Q Did you have any conversations with Mr. Roth about Mr. Greenstein and the sales practices that you observed?

A Yes, sir.

Q What did you say to Mr. Roth and what did he respond, if anything?

A I told Mr. Roth that we could not handle what Mr. Greenstein was doing, because he was getting those people in there, he was insulting them so bad that the motel owners had asked us to get out of their motels and that we could no longer solicit in the motels that we had spent two years setting up and that these people were furious with us and the practice in that room had changed a lot since I had come to work for them.

Q What did Mr. Roth say, if anything?

A He said that was too bad. He said we were not out there to hold hands, we were here to sell land, and that if those motel owners didn't like it, that was tough luck, that we would do it without them.

Q Did you ever have occasion -- I believe you testified you had occasion to take the OPC tour up to the tramway?

A Yes, sir.

Q When was that that you did that?

A When I worked in Old Town and --

Q What months was it, if you recall?

A From April of 1970 through about the 1st of September of 1970.

Q What did you do on the tour?

A I took the tour. I took the people and gave them the tour.

Q Had you gone on the tour before you actually gave the tour to see what it was like?

A Yes, yes.

Q Did you receive any instructions from anybody about what you were to do on the OPC tour up to the tram?

A Yes.

Q Who did youreceive the instructions from?

A From Jim Wall and Larry Hodgins.

Q What were the instructions, briefly?

A The instructions were if we were -- we were running a lot of tour then, so we didn't have a lot of tour guides, and they said if there wasn't a tour guide, you get on the bus yourself, this is the evening tour, and give it and get those people out here for us, and I said fine.

They gave me a bunch of books which had been printed by Rio Rancho.

They said, "Read this, and you have already been on the bus enough to know this is what you do, repeat the 101 facts," a little booklet and some other booklets.

Q On the way up to the tram, are you able to see vacant land out the bus windows as you are going up there?

A Hundreds of acres.

Q What, if anything, did you say to the people in the bus about the land they were seeing as they went up to the tram?

A Well --

Q Tell us as exactly as you can what you said to them.

A Okay. As we turned up Tramway Boulevard, we put our hand out to the left and we said, "As you can see, there is a lot of vacant land out here, although it is not really what you can class as vacant sellable land because this is owned by the Siandia Indians."

Then you said, "If you look over here you will see that this also looks like vacant land, but this is also not available, this is reserved land. And if you look to the south, and to the east you will see that that is military government land and that land is where the Siandia base is and the Kirkland base is; and if you can't see from here, but off to the south of us, if you are going to be driving south, you will see that that land down there is owned by the Pueblos, and then to the west of us is the Atrisco land grant, which is not for sale and probably can never be sold because it had over 100 to 150 descendants and it is tied up in a land grant.

Then you said, "If you will look over to the northwest of us, you will see where Rio Rancho is."

And that's what we said.

Q From up on top of the tram, you could see a pretty far distance, I take it?

A Yes, sir.

Q Could you see Albuquerque from up at the top of the tramway?

A Yes, sir.

Q How clearly could you see Rio Rancho from the top of the tram?

A You could see the vacant land out there and the road going up to it, but that's about all you could see, really.

Q Is it fair to say that from up at the top of the tram, you can see a long distance on the horizon, but you can't pick out details, necessarily, below you?

A That's true.

MR. FLEMING: Your Honor, I object.

THE COURT: Sustained.

Q Could you see the entrance to Rio Rancho from up on top of the tram?

A You could see the road going up to it.

Q How far down the road could you see?

A Kind of where it curved around.

Q Is there any reason physically why you can't see past that?

A Yes. There is a bluff there. The river runs, you know, down here and there is kind of a bluff, a hill, like you would call it, you know. It's a bluff, like.

Q From the top of the tram, can you tell where the end of Rio Rancho properties are if you don't know where it is?

A I have to say that I really don't know.

Can I explain why I didn't look?

THE COURT: No.

THE WITNESS: Okay.

Q Just, can you tell where the end of the property is from standing on top of the tram?

A Yes. They got binocular things. I'm sure you could if you got it out and look if you knew what you were looking for.

MR. FLEMING: I move to strike that, your Honor.

THE COURT: Sustained.

Q Did you personally know where Rio Rancho Estates boundary was?

A No.

Q Were you personally able to pick out the Rio Rancho boundary from the top of the tram?

A No.

Q The things you were telling people about the unavailability of this vacant land when you went up on the tour, those were, I take it, similar to what was at the sales presentation, correct?

A Yes, sir.

Q And the sales presentation had the additional item about the direction of the Albuquerque growth, is that correct?

A Yes, sir.

MR. FLEMING: Objection.

Q Did there come a time after you first worked for Rio Rancho Estates that you learned that the land you had been describing as unavailable was available for sale?

A Yes, sir.

Q When was that?

A In December of 1971 I began to look for a house.

Q What did you do when you went about looking for a house?

A I went to several -- well, I looked at the model homes at Rio Rancho and I went to several real estate agents and asked them to begin to look for me.

Q Did you drive around the city, also?

A Yes, sir.

Q What did you find when you drove around the city?

A There was a lot of vacant land.

Q For sale?

A Yes, sir.

Q What parts of the city?

A There was a tremendous amount in the northeast heights, there was not very much in the southeast heights. There was not as far as vacant land.

Are we talking about vacant land or housing?

Q Let's stay with the vacant land.

A There was a lot in the southwest valley, there was a lot out in the southwest, let's call it, up where the Atrisco land grant is on the map, but there is a lot of land up there for sale.

There also -- in the west of town, which is called the northwest but generally west, there is a whole bunch of it for sale.

And then on the northwest side there is a lot of it for sale.

Q WEen you say west, you mean due west of downtown?

A Yes, due west of downtown; yes, sir, a big --

Q How far is that from Rio Rancho?

A Ten miles.

Q What size parcels were these that you found vacant land available for sale?

A Anywhere from a lot to a city block to ten acres.

Q Did this land have electricity and power available to it?

A Most of it did, yes, sir.

Q Mrs. McCorkle, I want to show you what has been marked as Government Exhibit 1075 for identification.

Have you ever seen Albuquerque from the air?

A Yes, sir.

Q In an airplane, I take it?

A Yes, sir, and in a helicopter, also.

(Continued on next page.)

Q Would you look carefully at Government Exhibit 1075, and see whether you can recognize anything on it.

A Yes, sir. Here is he corner of Central and Coors Boulevard, there is the Rio Grande River, here is the airport over here, there is the mountain over there (indicating).

Q Does this look like a fair representation of Albuquerque to you?

A I'm sure it is.

Q Do you see the tramway anywhere on this exhibit?

A It would be -- I don't see it specifically, the building, but I would say it would be right in through here, because here is the ski runs and it was adjoining the ski runs (indicating).

MR. DEVORKIN: Your Honor, I would offer 1075.

(Pause)

VOIR DIRE EXAMINATION

BY MR. FLEMING:

Q Mrs. McCorkle, when you took your helicopter trips -- by the way, when did you fly around Albuquerque in a helicopter?

A I was with Jim Culver --

Q No, I just asked you when.

A In 1972. Rio Rancho paid for it.

Q And at what height did you fly?

A Just -- we just skimmed right over Albuquerque and we went right up -- we were on our way to Tucumcari and we went this way --

Q My question was, at what height did you fly?

A Sir, I'm not a pilot. I don't know.

Q Could you estimate for us?

A Yes.

Q Could you see the trees?

A Yes.

Q Is this what you saw from your helicopter?

A No, that's higher.

Q Is that what you saw from the helicopter?

A No. What I saw was bigger.

Q No. The answer is no.

A No, it's not.

Q Okay.

Do you know what height this was taken from?

A I have no idea.

Q Have you ever seen Albuquerque from this height?

A Yes, I have.

Q What height is it?

A Well, I don't know, but I know that the commercial airlines fly about that high and you see this little tinny town down there.

Q You know the commercial airlines fly this high?

A Well, I don't know.

Q When did you see Albuquerque from that height?

A Okay. I flew across Albuquerque from Chicago to Los Angeles in 1973, from Los Angeles to Chicago in 1973, and I also flew in 1975 and I just got through flying back there in 1976.

Q All right. From Chicago to Los Angeles? At what altitude was your plane flying?

A I'd have to say I don't know.

Q Was it a jet, a 707, 727?

A I paid for my ticket and I got on the airplane. I have no idea.

Q Do you know whether it was a jet plane or a propeller plane?

A I'm sure it must have been a jet.

Q Does the pilot announce the altitude?

A If he did, I don't remember. It was not imporatnt to me.

Q Did he announce it was in excess of 30,000 feet?

A I have no idea.

Q Do you know from what height this was taken?

A Sir, I've already told you that I don't.

Q Okay.

MR. FLEMING: I object.

MR. ARKIN: I have one question.

BY MR. ARKIN:

Q Mrs. McCorkle, did you ever ride in a satellite?

A No, sir.

MR. DEVORKIN: I object to that, your Honor.

THE COURT: So early in the morning, Mr. Arkin.

Objection sustained, unless you get to the jury the height that picture was taken.

MR. DEVORKIN: I will make this offer to the Court if you want to approach the side bar. I will do it that way.

THE COURT: No. You have to ask them, not me.

At the present time the objection is sustained.

MR. DEVORKIN: Your Honor, the government will prove the height at which this photograph was taken through a separate witness.

I am offering the exhibit now based on Mrs. McCorkle's testimony that what she says on it of Albuquerque fairly represents to her where the various things in Albuquerque are.

I will prove the exact height of the photograph.

THE COURT: I will take it for that limited purpose.

(Government Exhibit 1075 received in evidence)

MR. DEVORKIN: Your Honor, can we set up an easel?

THE COURT: I won't take it any more until we have from an expert the height at which that picture was taken.

MR. DEVORKIN: May I have a moment, your Honor, and I will do it right now?

THE COURT: All right.

(Pause)

MR. DEVORKIN: Your Honor, may we approach the side bar?

THE COURT: Yes.

(At the side bar)

MR. DEVORKIN: I am going to do this in some detail with another witness at a subsequent time. I thought the witness McCorkle on the stand it would be helpful in terms of her testimony relating things to land to have something for the jury to see what exactly she is talking about as she talked about it.

The photographs on that particular exhibit, 1075, come from a duplicate set of certified copies of photographs maintained in the files of the Geological Survey of the United States.

THE COURT: Wait, before you go on, have you seen this exhibit before?

MR. DEVORKIN: Yes.

MR. FLEMING: I think the defense has.

MR. ARKIN: We have seen certain of the exhibits, but as I understand it, those photos were taken by NASA Satellite.

MR. DEVORKIN: No, that is not correct. They are other photographs.

These are aerial photographs taken by the Geological Survey.

MR. FLEMING What height?

MR. DEVORKIN: Excuse me.

The specific photographs --

THE COURT: He asked you a simple question. What height?

MR. DEVORKIN: Your Honor, I don't know the precise height, because the certified copy of the photograph and the certificate itself, which is marked Government Exhibit 21, does not have the precise height. It has the date it was taken and so forth and so on.

THE COURT: Don't you see, that is important-- you know, you run off at the mouth an awful lot. This is the tenth time during our getting together in this trial since the middle of the summer that every time I start to talk you just keep on talking, not listening to what I am saying at all, and s am getting fed up with it.

You are supposed to be a responsible lawyer and I have told you several times before to stop it.

Now, it is important for this jury to evaluate this woman's testimony to know the height that this picture was taken.

Now, get it or it stays out.

(In open court)

CONTINUED DIRECT EXAMINATION

XX BY MR. DEVORKIN:

Q Mrs. McCorkle, when you went looking for homes, did you also see homes for sales apart from vacant land?

A Yes, sir.

Q Where did you see homes for sale?

A All over Albuquerque.

Q Specifically, which sections?

A Well, I looked -- I was interested in --

MR. FLEMING: The witness testified all over Albuquerque, if your Honor please.

I object to the form of the question.

THE COURT: She said all over.

Q Where did you actually buy a home, if you did?

A Directly west of Albuquerque about three to four miles from the downtown core.

Q How far is that from Rio Rancho?

A About ten to eleven miles.

Q Why did you buy a home at Rio Rancho?

MR. ARKIN: Objection.

MR. FLEMING: Objection.

THE COURT: Sustained.

Q Did you look at homes at Rio Rancho?

A Yes, sir.

Q How did the price of the homes at Rio Rancho compare to the home that you bought?

A About $10,000 higher.

Q What was the comparison in terms of the actual home you are talking about?

A They were about equivalent.

Q Were there other homes of the kind that you bought available for sale in the area that you bought your home?

A Yes, sir, yes, sir.

Q Did you ever visit any real estate brokers in Albuquerque and look at their listings when you were looking for a home?

A Yes, sir.

Q Did you see any listings that they had for vacant land properties?

A Yes, sir.

Q In what areas did you see listings for vacant land property?

A Well, I saw some in the Northeast Heights and I saw some in the Southwest Valley and the Southeast, a few in the Southeast. I saw quite a bit in the Northwest and I saw an awful lot of property listed for Rio Rancho Estates.

Q When you say the Northwest, what do you mean?

A Well, the Northwest -- the Northwest, down by the river, you know, in that area. There was also some called the Malcolm property, which was some of the land that I thought was some of the Atrisco land grant, it was not, it is owned by a man named Malcolm and it was --

Q Did you see some in Volcano Cliffs?

A Yes.

THE COURT: Where in Volcano Cliffs?

THE WITNESS: Due west of Rio Rancho.

Q South of Albuquerque?

A Yes, sir.

Q About how many miles is it from Volcano Cliffs to Rio Rancho?

A About eight miles.

Q Did you see a listing for Volcano Cliffs at the real estate brokers?

A Yes, sir.

Q Does Volcano Cliffs have utilities, if you know?

A Yes, sir.

Q All of it or some of it?

A No, all of it. It was incorporated into the city when it was planned and the utilities are all there.

Q Have you driven through Volcano Cliffs?

A Yes, sir.

Q Does it have paved roads?

A It does have some paved roads.

Q Did you ever see any newspaper listings for sale of lands in the Atrisco grant area?

A Yes, sir.

MR. FLEMING: Is this in 1971?

MR. DEVORKI: We will get to that.

Q When was that?

A From 1971 and '72 and '73, and when I was just there in 1976 I just saw some listed in the Atrisco land.

Q When you saw the listing, what did you see?

A It said land for sale in the Atrisco land, and it gave a number of call.

Q I take it this is the first time you realized that these lands were for sale.

A Yes, sir.

Q Did you ever make the tour presentation after that?

A No, sir.

Q When you worked for Rio Rancho Estates, were you aware of any resale market for Rio Rancho lots?

A No, sir.

MR. ARKIN: Objection.

THE COURT: Overruled.

Q Did you ever see in any Albuquerque papers advertisements for Rio Rancho lots?

A Yes, sir.

Q How frequently did you see them?

A Continually.

Q About how many would you see?

A I would see most -- in a percentage of, say, maybe -- at least 25 percent of the vacant land that is listed in the paper that I saw, the papers while I lived there, was people trying to get rid of Rio Rancho Estates property.

THE COURT: And what period of time was this?

THE WITNESS: From 1971 through -- well, from 19 -- that I was -- 1970 through 1973.

Q Was it in the classified section of the paper?

A Yes, sir.

Q Generally speaking, what did these ads say?

A It said desperate, must sell, will sacrifice, you know, stuff like that, trying to get rid of it.

Q When you went to the brokers and you were looking for your homes, did you tell them where you worked?

A Yes, sir, they asked.

Q What was their response?

MR. ARKIN: Objection, your Honor.

THE COURT: Sustained.

Q Did the brokers show you anything?

A Yes, sir.

Q What did they show you?

A They showed me in the back of the book a big wad of people who were trying to sell Rio Rancho property, the listings that they had.

Q Did they say anything about the listings?

MR. FLEMING: Objection.

THE COURT: Sustained.

Q Between 1961, when you left Albuquerque, and when you came back to live in 1969, had Albuquerque changed?

A Yes, sir.

Q Had there been growth in Albuquerque?

A Yes, sir.

Q Lots of growth?

A Yes, sir.

Q Where was most of the growth that you

observed between 1961 and 1969?

A In the Northeast Heights.

Q Anywhere else?

A Yes, sir. There was a little bit out in the Southwest Valley and there is a little bit towards the Northwest Valley.

Q Have you been back to Albuquerque since 1972?

A Yes, sir.

nd t3B

Q Have you seen more growth in the northeast?

A Yes, sir.

Q What about in the west side, directly west of Albuquerque where you used to live?

A No, sir, there is very little. There were a few model homes behind west mesa. There was a hamburger joint and maybe about one filling station and that is directly west.

Q There is still vacant land there for sale?

A Lots of it, yes, sir.

Q Did you go to Rio Rancho?

A Yes, sir.

Q Is there growth at Rio Rancho?

A There was some. There was some.

Q How did the amount of growth you saw at Rio Rancho compare with the growth you saw in the northeast?

MR. ARKIN: Objection, your Honor.

THE COURT: Overruled.

A In my opinion, sir, there wasn't any comparison. The growth in the Northeast Heights, there is big areas now that have houses that didn't have.

Q By the way, did you see any development on the east side of the Ciandia Mountains?

A Yes, in fact they built a big brand

new super highway, it goes out north ten and there is a great big development now going out there that is just lots of houses. I was amazed.

Q How far away from downtown Albuquerque is that?

A I would say offhand probably 12, 15 miles, I don't know.

Q How long does it take to get there?

A On the super highway it doesn't take very long.

Q When you were working --

MR. FLEMING: Objection. There is no foundation for that question, your Honor.

THE COURT: Sustained.

Q Have you gone out there?

A Yes, sir.

THE COURT: How?

Q By car?

A Yes, sir.

Q On the super highway?

A Yes, sir.

Q Does the super highway go into the center of town?

A There is a freeway from the center of town

town which is Hi 40, but off of Hi 40 there used to be only a mountain road. Now they have built a nice road to accommodate all the people who have moved out there in the last few years.

Q How long did it take from downtown Albuquerque to this development in the mountains?

A I went out there to eat and I would say it probably took me about fifteen minutes, twenty minutes, I don't know.

Q When you were working for Rio Rancho, was anything said to customers about new bridges and new highways between Albuquerque and Rio Rancho?

A Yes, sir. I believe it is in the West Side Story, in the movie.

MR. FLEMING: I object.

Q It is in the West Side Story, is that correct?

A Yes, sir.

THE COURT: We have seen the West Side Story so we don't have to go into that, do we?

Q Do you recall the statements in the West Side Story about five new bridges?

A Yes, sir.

Q How many bridges were there crossing the river between Albuquerque and Rio Rancho when you came to work for Rio Rancho?

A On the west side of town there were two.

Q How many bridges are there today?

A Two.

Q After you saw this land available for sale, did there come a time when you were working for Rio Rancho Estates and were seeing this sales presentation you described when you believed that sales presentation to be false?

MR. ARKIN: Objection, your Honor.

THE COURT: Sustained.

Q Did there come a time when you believed anything about the sales presentation was not true?

MR. ARKIN: Objection.

THE COURT: Not believe. Ask the factual material.

MR. DEVORKIN: Your Honor, I am trying to ask the same question --

THE COURT: Please reframe your question. I am sure you are capable of doing it.

Q Mrs. McCorkle, was there anything about the Rio Rancho sales presentation that was being given when you worked for Rio Rancho which was not true and accurate?

A Yes, sir.

Q What was that?

A It was the fact that there wasn't anywhere for Albuquerque to expand except through Rio Rancho.

MR. ARKIN: Move to strike, your Honor. It is an opinion.

THE COURT: You can cross examine on it. He said not true or accurate. She is saying that and she has lived there.

Go ahead.

Q What about the sales presentation was not true or accurate?

A The fact that there wasn't anywhere for Albuquerque to go except through Rio Rancho.

Q What about the statements about land available in Albuquerque?

MR. FLEMING: Object to the form. I withdraw it.

THE COURT: That I would sustain.

MR. FLEMING: I withdrew the objection.

MR. DEVORKIN: He withdrew the objection.

THE COURT: You withdrew it? Okay, I withdraw my sustaining the objection.

MR. ARKIN: I will make an objection, then.

THE COURT: It is too late.

A The land that I had prior said or the land that was showed to be called reserve land was really land that was listed for sale and that was in the northeast segment and that was the big empty land that I had showed people and told them that land was no longer available for sale and it was called reserve and it was not. It was for sale. I looked at a piece of it myself.

Q You kept working for Rio Rancho after that, correct?

A Yes, sir.

Q Even though you knew that Rio Rancho was making these representations?

A Yes, sir.

Q Why?

A Because I needed the money. I supported three children by myself.

Q After you saw this land that you have described to us when you were looking for your home, did you ever have any conversations with any of your superiors about the sales presentation at Rio Rancho?

A Yes, sir.

Q When was that?

A I had a talk with Larry Hodgins because I got real depressed about it in December.

Q When was it?

A December of 1970.

Q Where was it?

A It was in the Panorama Inn at the lounge after a dinner party.

Q Who else was present?

A There were several salesmen, maybe as many as five.

Q What did you say to Larry Hodgins and what did he say to you?

A I told him --

THE COURT: Wait, what was Hodgins' title at that time? You told us titles changed as frequently as salesmen did.

THE WITNESS: He was sales manager at that time of the OPC department.

THE COURT: All right.

Q What did you say to him and what did he say to you?

A I told him that I was getting ready to sign for a house and that I felt real bad about it because I found out that all this that I had believed up until this time was no longer true. You know, I asked -- it made me feel funny and so he told me, he said, it shouldn't make me feel funny because of the fact that we weren't really ojw

selling land out there, we were selling a dream. We were selling people something that they could take home with them. These were people from New York and Cleveland and Pittsburg and all these places and most of them never even owned anything. Some of them didn't even have a car. They lived in apartments and would never have a chance to own something and all we were selling them was a piece of paper that they could take home and put on their wall and when their brother-in-law came over for a beer on Saturday night, they could say, look, I own this. This is a half an acre in New Mexico or an acre, whatever it was, and it is mine, and it's real and it's out in the west and this is what we were selling. We weren't really selling land; we were just selling a dream.

MR. DEVORKIN: No further questions.

THE COURT: We will have a recess.

(Recess)

(In open court - jury present)

THE COURT: You may proceed.

CROSS EXAMINATION

XXXX BY MR. FLEMING:

Q Mrs. McCorkle, precisely when did you buy your house in Albuquerque?

A In December of -- let's see, I made reservation for it and I actually signed the papers about the first week of January of 1971.

Q January of 1971?

A Yes, sir.

Q When did you leave the employment of Rio Rancho?

A Around the 1st of November of 1972. The end of October, the 1st of November.

Q That would be about twenty months later after you bought your house, is that right?

A Whatever it is, yes.

Q You say that you saw city blocks for sale.

A Yes, sir.

Q Were you looking for city blocks?

A No, my present husband was.

Q Your present husband was looking for city block of land?

A He was looking for land to buy.

Q Was he looking for a city block?

A If it was a good deal, yes, sir.

Q What wasthe price of a city block?

A There were varying prices at different places.

Q Give me an average price of a city block in Albuquerque.

A Okay, we bought one at Volcano Cliffs and paid $1400 for it. We bought two corner lots so that would comprise a city block.

MR. FLEMING: May I have that answer struck, your Honor.

A That is within the city limits of Albuquerque.

MR. FLEMING: If your Honor please --

THE COURT: Why don't you just listen to the question. Slow down in your answering. The reporter is having difficulty in taking down your answers.

THE WITNESS: Okay.

Q Can you give me a price of a city block of land in Albuquerque which you looked at, a city block?

A $1400.

Q For a city block. I withdraw that.

How do you define a city block?

A Any area which has a corner on either side and a street in between.

Q Is it your testimony under oath that one city block of land, vacant land in Albuquerque was available for $1400?

A My testimony is, sir, I bought a piece of land for $1400 which I consider a city block.

THE COURT: I gather that you don't mean a square block, do you?

THE WITNESS: No, sir.

THE COURT: You mean land fronting on one side of a street?

THE WITNESS: Yes, sir.

Q What acreage?

A Pardon?

Q What was the acreage?

A It was in the lots.

Q What was the acreage?

A I don't know.

Q What was its size by feet?

A About 100 foot by 100 foot, each lot.

end

THE COURT: How many lots?

THE WITNESS: Two lots back to back.

Q How long did you look for a house?

A A couple of months.

Q And it was during this period of time --

THE COURT: Does that mean if you put them together, the lots were 200 by 100, the total dimension?

THE WITNESS: They were 100 feet wide and across. They were on a corner, one corner being here and one corner being there, and they were 100 feet this deep and 100 feet deep this side, so it would be 200 feet long.

THE COURT: Were they adjoining?

THE WITNESS: Yes, sir, it was back to back.

THE COURT: So it was 200 by 100 feet.

Q That is what you testified to when you said a city block, is that correct? Is that what you meant by a city block?

A Yes, it would be. Well, that's what I consider a block.

Q My question is, is that what you meant on your direct examination when you referred to a city block?

A Yes.

Q Didn't you just testify that you looked for about two months before you bought your house?

A Yes, sir.

Q And it was during this two-month period of time that you came upon all the information as to which you have testified about available land in Albuquerque, is that correct?

A No, sir.

Q During this two-month period of time, did you become -- did you learn some of the information about which you testified as to available land in Albuquerque?

A Some of it.

Q And that two-month period of time would have been November and December of 1970, is that correct?

A From September, yes, sir.

Q You purchased your house in January?

A I looked from about September, October, November.

Q So in any event, by January, 1971, you had a fair idea that there was lots of vacant land in Albuquerque, according to your testimony, is that correct?

A Yes, sir.

Q And you continued to work at Rio Rancho for 20 months?

A Yes, sir.

Q Do you recall testifying under oath in another proceeding having to do with Rio Rancho?

A Yes, sir.

Q And do you recall being asked these questions and giving these answers under oath --

MR. DEVORKIN: Can I have the page, please?

MR. FLEMING: Page 2301.

Q (Continuing):

"Q You are a truthful person, are you not?

"A I hope so. I always felt I was.

"Q And you always told the truth as best you are able to?

"A Yes, I have.

"Q When you took the people around the Albuquerque area and you showed them where the Indian reservation was, you were telling them the truth as far as you knew it, isn't that right?

"A Well, I had been given a booklet by Rio Rancho.

"Q Isn't that right?

"A Yes, that is what I had been told.

"Q As far as you knew, that was the truth, isn't that right?

"A Yes.

"Q When you pointed out to them where other features of Albuquerque were, you were telling them the truth so far as you know?

"A As far as I know, yes."

And this testimony, by the way, was sometime in 1976, was it not?

A Yes, it was.

Q It was this year that you testified that so far as you knew you were telling the truth about the land in Albuquerque?

A That's not true. If you will read that back, you will see that he was talking -- he said you told them about the things.

Q Just a moment.

A The buildings and the --

THE COURT: Wait, wait.

THE WITNESS: Okay.

Q I will continue.

Were you asked these questions and did you give these answers:

"Q As far as you knew, that was the truth, isn't that right?

A "Yes.

"Q When you pointed out to them where other features of Albuquerque were, you were telling them the truth so far as you know?

"A As far as I know, yes.

"Q And that applies when you pointed out to them the government land south of Albuquerque, isn't that right?

"A It's not actually south, it is over in that direction, over there. I guess you could call it southeast. You know, you pointed, you didn't say over in the southeast, you just pointed that area.

"Q You have always told them the truth as far as you could?

"A I tried to."

Were you asked those questions and did you give those answers under oath in 1976?

A Yes, I did.

Q Did you, during that testimony, testify as you did this morning that in the fall of 1970, you found out that you were not telling the truth?

A No, sir. I don't remember if I did. Did I?

Q Did you, during that testimony, tell them that this man Hodgins -- was that his name?

A Hodgins, yes.

Q Did you during that sworn testimony in 1976 say that this man Hodgins had told you, "Forget about it, we are just selling a dream."?

A No, sir. They didn't ask me.

MR. FLEMING: I move that be stricken, your Honor.

THE COURT: Sustained.

Q They asked you if you were telling the truth and you said you were, did you not?

A Yes, I did.

Q How long have you been here in New York preparing for your testimony?

A I came in on Sunday evening.

Q And who have you been talking to?

A Well, I've talked to Mr. Devorkin.

Q And how long have you been talking -- how long did you talk to Mr. Devorkin between the time you came in here and the time you got on the stand yesterday?

A I talked to him yesterday morning and I met with him -- I never met him -- and he came and introduced himself to me on Sunday evening.

Q I understand.

I said, how long?

A Several hours.

Q And then you testified yesterday afternoon for a while, is that correct?

A Yes, sir.

Q And did you have any talk last night with Mr.

Devorkin?

A No, sir.

Q You spent no time whatever with him last night?

A No, sir, I didn't.

Q So the extent of your conversation with Mr. Devorkin was several hours yesterday before you testified?

A Yes, sir.

Q You talked to him and he talked to you? Is that right?

A Yes, sir.

Q I want to refer you to the transcript of your testimony yesterday at page 2919 (handing).

A What part of the page or the whole page?

Q Just give me one moment.

(Pause.)

A Okay.

Q I direct your attention to line 8 to line 16.

Do you recall Judge Metzner said, "I'm getting ready to go on the tour," and you gave your -- I will withdraw that.

You testified that you were working for the OPC program and you were out in Albuquerque in the Old Town area soliciting units, as you called them, to come to a luncheon or a dinner, is that correct? Is that correct?

A Yes.

Q Is that yes?

A Yes.

Q And you gave what you called your pitch yesterday. Do you recall that?

A Yes .

Q Beginning at line 18, I would like you to read with me to confirm that I have read accurately:

"THE WITNESS: Okay. If you really want to go, I'll really put you on. Okay.

"I would say, "Hello, I'm Darlene Wilkinson, I'm from Rio Rancho, and I would like to invite you to go on our free tour of the Albuquerque area."

"You would say, "What for?"

"And I'd say, "Well, I want to send you on this tour and I'm goingto take you to every interesting spot in the Albuquerque area. We are going to take you up Central, show you the University of New Mexico, you are going to ride on the Siandia Peak Tramway. I'm sure if you drove in you saw signs advertising it -- and if you flew in there was a tramway that went up the mountain that had the longest span in the U.S. We are going to let you take this with your family free and then we are going to serve you lunch at the Panorama Inn.

"Then you would say, meaning the customer or prospective customer, "What do I get all this for? What is the catch?"

"And I would say, "Well, there isn't any catch at all, sir. We just want to take you and your family and show you what has happened here in Albuquerque and the Albuquerque area over the last ten years, and this is our opportunity to show the tourists who are traveling through what is going on in New Mexico, and we are going to serve you lunch at the Panorama Inn and you will be shown a short movie, about 15 minutes, called The West Side Story. But I'm sure you won't mind seeing that one. I'm going to give you with a $10 tramway ride. Would you --

"And you say, "Yes."

"Then I say, "Fine, and I write you out a ticket and I hand it to you and off you go."

"We have a big tour bus over at the curb and I show it to you, I say, "We'll load in 15 minutes or a half hour," or whenever the tour is leaving."

Have I read correctly?

A Yes. That would be for the evening tour.

Q Have I read correctly?

A Yes, sir.

Q And then you testified, "That's about what I said verbatim."

A That's about. It's been four and a half years since I've given that.

Q Now, did you testify --

A Yes. I testified that was about what I said.

Q Did you testify, "That's about what I said verbatim"?

A Yes.

Q Verbatim means word for word, am I correct?

A If it does, I did not realize that when I said it.

I said it was about what I said and that's what I meant.

Q Is it your testimony that you do not know the meaning of the word "verbatim"?

A I would say I used it out of context, if that's the true meaning.

MR. FLEMING: May I have that answer struck, if your Honor please?

THE COURT: Yes. Strike it.

Q Is it your testimony that you do not know the meaning of the word "verbatim"?

A No, I couldn't say that.

Q You do know the meaning of the word verbatim, do you not?

A Yes.

Q And it means word for word, does it not?

A It does.

Q And your testimony was, "That's about what I said verbatim", correct?

A Yes.

Q Would you tell me when during that solicitation you found out that the prospective customer was a lawyer?

A After that, as I testified.

Q And when did you find out he was a preacher, as you called him?

A It was after -- we pitched everyone, and it was after they had been pitched that we then had the opportunity to talk to them and we could discourage them from going.

Q So it was possible you could end up with units of lawyers?

A It's possible.

Q And then no lunch?

A And no lunch?

Q There would be nobody to go to lunch, is that right?

Q You would take the lawyers anyway?

A If we didn't have enough, we would go ahead and take everyone.

Q Your fears would be overcome?

A Well, it was a matter of filling a room. That's why we overbooked.

Q Did you testify this morning in response to Mr. Devorkin's testimony --

MR. DEVORKIN: Mr. Devorkin's questioning.

MR. FLEMING: Questioning.

Q Did you testify this morning in response to Mr. Devorkin's question that you were told that no Mexican Americans who lived in New Mexico should be asked to the luncheons because they would know the true value of the land?

A Yes, I did testify to that.

Q Isn't it a fact that you were told that a Mexican American should not be asked to the luncheon if it appeared that financially he would not be able to she would not be able to bear the expense of purchasing property at Rio Rancho?

A No, sir, that really is not true.

Q It was true back in 1973, was it not, when you were interviewed by a Mr. Carrillo?

A We were told --

Q No.

A What?

Q Was it true back in 1973 when you were interviewed by a Mr. Carrillo?

A I would say I don't remember.

Q Do you remember Mr. Carrillo?

A Yes, I do.

Q Do you remember Mr. Carrillo coming out and interviewing you for a substantial period of time?

A Yes, I do.

Q He had a tape recorder?

A Dictaphone, I believe.

Q Dictaphone. He talked to you for about an hour?

A I probably talked to him for about four or five hours.

Q Four or five hours?

A For a long time. I don't even know how long I talked to him, but for quite a while. We had coffee and visited.

Q And did you tell Mr. Carrillo that Mr. Roth's explanation with regard to Mexican Americans and American Indians was that they could not afford the property?

Do you remember telling Mr. Carrillo about that in 1973?

A Okay. That was Mr. -- that was company policy long before Mr. Roth.

Q No. My question is:

Did you tell Mr. Carrillo in 1973, three years ago, that Mr. Roth had told you with regard to Mexican Americans and American Indians that they should not be solicited because they might not be able to afford the property?

A Yes, I did.

Q Did you?

A Yes, I did.

Q All right.

Did you tell Mr. Carrillo that Mr. Roth told you that you should not solicit a Mexican American who lived in New Mexico because he knew the value of land and it might show up the whole deal?

A That was what we told --

Q Did you tell him that?

MR. DEVORKIN: Can we have a date when these conversations were supposed to be?

THE COURT: He said in 1973. You can get the exact date.

THE WITNESS: The original.

MR. DEVORKIN: I don't mean that. I mean the date that these conversations with Mr. Roth were supposed to be held.

THE COURT: I don't know if anybody knows, unless the witness knows.

THE WITNESS: I know.

THE DEFENDANT: All right.

Q Back in September of 1973, you told Mr. Carrillo that Mr. Roth, with regard to Mexican Americans and American Indians, said that they might not be able to afford the property, is that correct?

A Yes, that is correct.

Q All right.

And you did not tell Mr. Carrillo, as you testified this morning, that Mr. Roth said, "Don't bring a Mexican American --"

MR. DEVORKIN: I object to that, because the testimony was that she was told this when she first came to work and Mr. Roth didn't work out at Rio Rancho at the time.

THE COURT: We can take that up on redirect, can't we?

MR. DEVORKIN: But Mr. Fleming is really

mischaracterizing the testimony.

THE COURT: He is merely asking whether she said this in 1973.

MR. DEVORKIN: But Mr. Fleming, your Honor, said as she testified this morning about Mr. Roth, and it was put in that context.

THE COURT: He didn't testify that Mr. Roth said that this morning.

You can take it over on redirect.

MR. FLEMING: I don't know where we are, Judge. May I ask the question?

THE COURT: Yes.

Q Did you tell Mr. Carrillo in September 1973 that Mr. Roth had told you that no Mexican American should be brought to the sales luncheons because they knew the true value of land and it might blow the whole deal?

A No, I did not tell him that Mr. Roth said that.

Q The answer is no, is that right?

A No.

Q In fact, you didn't tell him that anybody told him that, did you?

A Yes, I did, probably.

Q On your oath?

A Yes, on my oath.

There is a lot that I told him that's not in that.

Q No, I don't want an explanation.

My question is, it is your oath that you told Mr. Carrillo back in September 1973 that Mexican Americans living in New Mexico were excluded because they knew the true value of the land in New Mexico?

Is that your oath?

A I'll have to say no, I don't remember.

Q Would you turn to page 2928 of yesterday's transcript.

A My transcript goes from 2866 to 2969.

Q I can help you.

There is 2928 (handing)

Do you remember being asked at the close of your testimony yesterday about why preachers, why you were told preachers should not be brought to the luncheons?

A Yes.

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Q I direct your attention to line 19 and your answer "Well, let's start off with preachers. How do you sell a preacher an investment for twenty, for ten years when he thinks the Lord is coming any day, you know, it's kind of hard to do, you know."

Why did you change from twenty to ten years?

A I could have said it from ten to twenty years, but I just said it from twenty to ten.

Q Your testimony was "How do you sell a preacher an investment for twenty -- for ten years when he thinks the Lord is coming any day, you know."

My question is, why did you change from twenty years to ten years in the middle of your testimony?

A Sir, I didn't change, I said twenty very plainly and then I said for ten. For twenty years, they don't think they are going to last twenty years.

Q There is no question in your mind when you were soliciting customers to purchase Rio Rancho land, you were soliciting them for a long term investment of twenty years or so?

A That is not true.

Q Let me ask you again:

What did you mean by your answer, "How do you sell a preacher an investment for twenty--for ten years when he thinks the Lord is coming any day, you know"?

A Sir, I meant exactly what I said. How do you sell him anything. How do you sell him a vacuum cleaner.

Q For twenty years?

A You know, an insurance policy, anything, they think any day now there is going to be this catastrophe. We are speaking of Baptist preachers and they think tomorrow there is going to be a rapture, you know, so how do you sell them anything, an insurance policy? They don't think they are going to die in twenty years or five years for that matter.

Q So your testimony is an investment for twenty years -- for ten years had nothing at all to do with the term of investment you were selling, is that correct?

A It will be a lot longer than twenty years at Rio Rancho.

Q Answer my question, please, Mr. McCorkle.

A Repeat it then.

Q Is it your testimony that your testimony yesterday,"How do you sell a preacher an investment for twenty -- for ten years when he thinks the Lord is coming any day, you know" had nothing at all to do with the length of the investment you were selling; is that your testimony?

A That is true.

Q You would have said the same thing about vacuum cleaners?

A In a situation -- well --

Q And preachers?

A Something which is a long term type thing.

Q Was your OPC program very successful?

A I would say in the beginning, yes, it was.

Q Isn't it true you closed about five percent of those that attended the luncheon?

A I don't know what they closed. All I know is how many units went.

Q You don't know how many they closed?

A No, I don't.

Q You testified about salesmen taking customers who had closed out of their luncheon?

A I testified --

Q No --

A Not closed though, just signed. They signed. That doesn't mean they closed.

Q You mean they could still cancel?

A Yes, they could.

Q Go out and look at the property?

A They could cancel without looking at the property when they got out of the room.

Q Did Mr. Devorkin know that?

A That they could cancel?

MR. DEVORKIN: I object to that.

A I think they had six months.

THE COURT: Overruled.

Q Did you tell Mr. Devorkin that?

A He never asked me.

Q He never asked you if they could cancel?

A No, sir.

Q You don't have any idea what percentage of those who attended the luncheons closed?

A No, sir.

Q You don't have any idea whether the program was successful or not?

A I know they continued to pay us and we continued to have the program and those programs that weren't successful followed.

Q Now on your average day how many units, as you call them, did you have to question before you were able to fill a luncheon?

I will withdraw that.

How many units did you need to fill a luncheon?

A We preferred ten. There were some days, if it was raining, you couldn't get them, but they liked to have about ten.

Q That would be ten couples?

A Yes -- no, ten units, which could be just a single person.

Q It could go twenty single people or ten couples or a mix of that, is that right?

A No, it could be ten single people or twenty people making up ten couples.

Q I see.

Now, what percentage of people whom you approached on the street in Albuquerque accepted your solicitation?

A That would be very difficult to say. I talked to a lot of people. I really could not say how many.

Q Did everyone accept?

A No, sir.

Q One out of two?

A No, sir.

Q One out of three?

A Maybe one out of four or five.

Q One out of four or five?

A Yes.

Q About twenty percent?

A Possibly that high. Depending on the day. There are a lot of variables.

Q As low as five percent?

A Probably not that low. In motels, yes, that low.

Q On the street?

A No.

Q Maybe ten percent?

A I really don't know.

Q You don't have any recollection of that?

A Of how many people I talked to on one given day?

Q What percentage of people that you approached on the average accepted your invitation?

A About one out of ten people maybe.

Q About ten percent?

A Now we are talking of an average. Okay.

Q Yes.

A Ten, fifteen percent.

Q Did you have to also solicit for dinners?

A I solicited for the luncheon and for the dinner, for the evening tour.

Q What time did you go to work?

A At 10:00 o'clock in the morning.

Q What time did you quit or leave work, I am sorry?

A Leave work, that was also very variable. If I took the tour I didnt' get home until 11:00 or 12:00 o'clock at night.

Q That would be the evening tour?

A Yes.

Q Was it your practice to take the evening tour?

A Not always, just when they needed me.

Q Did you take the evening tour more often than not?

A I would say that is not true.

Q You did not take it more often than not?

A That's true.

Q What percentage of the evening tours did you take, how often did they need you?

A In the beginning I took it quite frequently. Towards the end when they got enough tour guides trained, I didn't have to take it as often, maybe once -- when someone was sick, maybe once a week, once every other week. I did it as a favor.

Q How long did the luncheon last?

A Now are we speaking of the luncheons or the dinners?

Q I said luncheon.

A Okay, from 12:00 until about 1:15.

Q Now, you had to attempt to solicit ten units for a luncheon, is that right?

A Yes, between ten and twelve I could fill that room by myself.

Q Ten or twelve units for a dinner, is that right?

A Yes. About ten preferably.

Q Ten for lunch and ten for dinner?

A Yes.

Q You got acceptances from about one out of every ten units you talked to?

A Some days everone I talked to took my tour. You know, you cannot -- there are different days, different holidays.

Q Did you testify that on the average it was one out of ten units you spoke to went to lunch?

A Probably on the average.

Q You were paid per unit $3, were you not?

A Yes.

Q You needed the money?

A Yes.

Q So that the more units you could get to go to lunch or dinner the more money you made?

A That is not true. I could only take so many.

Q But you had a salary plus $3 a unit?

A Yes.

Q You had to solicit lunch and you had to solicit for dinner?

A Yes.

Q The middle of the day you took off and went to lunch and did not solicit on the street for dinner?

A That is true. It was very hot there and we were walking outside and so we didn't work until about 3:00 o'clock to solicit for the afternoon tours because of the sun.

Q You testified that or did you testify that the salesmen would divide the properties on the allocation sheet before lunch?

A Yes, sir, they did.

Q That would mean that they were stuck with a particular property when they sat down at a table?

A Several pieces of property.

Q They took several pieces of property?

A Yes, sir.

Q How many pieces of property were on an allocation sheet?

A I don't know. They had several allocation sheets also.

Q Several allocation sheets?

A They just divided it up. There was more than just this group of salesmen.

Q They had several allocation sheets?

A Yes.

Q As a matter of practice they had more than one allocation sheet, is that right?

A I could not say that was a matter of practice, no.

Q What was the practice, did they have one or more than one allocation sheet?

A The sales manager had several. Now the salesmen themselves -- which question, which one.

Q How many allocation sheets did they have at a luncheon?

A Who, which one of these people are we talking about? The sales manager or the salesmen? They had one, the salesmen. They would circle themselves a copy and they would pick themselves out like two, three, maybe even four pieces of property, several pieces of property.

THE COURT: Wait a minute.

Do you mean there was a so-called master allocation sheet and the salesman before the luncheon would take from that master allocation sheet two, three or four pieces that they wanted for themselves?

THE WITNESS: For the day, yes, sir.

THE COURT: That is the way it was carved up?

THE WITNESS: Yes, sir.

THE COURT: So there was one allocation sheet and the salesmen took from that allocation sheet a certain number of properties?

THE WITNESS: Yes, sir.

Q How many salesmen were there?

A That was variable also.

Q What was the usual number of salesmen at a luncheon?

A At least ten.

Q At least ten salesmen?

A Yes.

Q They each took two, three or four pieces of property to themselves for sale, is that correct?

A Maybe they would take -- okay -- I don't know, other than the fact that they each took some.

Now, if depending on how many ranchettes were listed, they may not have enough, you know, for everybody to have a ranchette so they would take one piece of property and it would depend on what they had gotten, whatever day they got it and then they would have this one.

If somebody needed a ranchette, he had the number ready, you know. He could say well this is the ranchette I have got.

Q Mrs. McCorkle, do you know how many pieces of property each of these ten salesmen would allocate to himself from the daily allocation sheet?

A No, I do not.

Q How did the salesmen know before he sat down at the table with the customers or potential customers what property the people he wouldbe sitting with might be interested in?

A He didn't.

Q So as a result of this procedure, I take it, a salesman was often stuck with property in which his particular customers to whom he had been assigned had no interest?

A They didn't know what to be interested in. It didn't make any difference to them. It was just a piece of property. They didn't know where it was or anything.

It was just a number.

Q It is your testimony that at these OPC luncheons and dinners the salesmen, without knowing what interest their particular customers might have, would take pieces of property and allocate them to themselves, is that right?

A Yes, that is true.

Q That would be done before they sat down with their customers?

A Yes.

Q Then I take it no one else but that salesman could sell that piece of property, is that right?

A I don't know that.

Q Oh.

A I don't know how many more of those same allocation sheets were out elsewhere at other parties. There were other parties going on at the same time.

THE COURT: You are not being asked about other parties. You are being asked about parties that you attended.

You don't know about one any place else and nobody is asking you to speculate.

THE WITNESS: Okay.

THE COURT: As to what went on someplace else.

Q Did the salesman ever stand up at one of these luncheons and say, you know, I took a ranchette for myself and I have got nobody at my table that is interested in a ranchette, does anybody have a half acre?

A No.

Q Did the salesman ever complain about this pre-party allocation?

A No.

Q That is the way they did it?

A Yes, sir.

Q Now, did you ever see any of these Irv Roth, is that his name, did you ever see any of his arrowheads?

A No, sir.

Q How about the imitation cactus, did you ever see any of those?

A No, sir.

Q Did you ever see anybody -- did the salesmen ever tell you how they would drop these arrowheads on the land?

A I didn't talk to those salesmen, no.

Q Did Mr. Roth explain how he would go out and put the arrowheads?

A Yes.

Q He did?

A Yes.

Q How would he do it?

A He just said they went out and sprinkled them around on the different property, like their allocations, they went out and sprinkled them around so the people could walk around and find them.

Q Did he explain how thatv would work? How would he know where he was going before he sprinkled the arrowheads?

A The allocation of property.

Q He took an allocation sheet and he went out and he went to each of those properties that were allocated on --

A Mr. Roth --

Q On the 90,000 acres of Rio Rancho and he put the arrowheads out, is that right?

A No, it was not like that.

Q How was it?

A Well, to begin with Mr. Roth worked with flight tours and we were with OPC and so you are asking me two different departments. He said he did that. That is what he said he did.

Now, how he went out there, I don't know. I never even went out on the property so I don't know what he did other than what he said he did.

I know that because he said where he expected them to do that also, but that wasn't for me. I wasn't going to be out there sprinkling arrowheads.

Q You don't know anything more about any imitation cactus?

A He advised them to do that and he said everyone liked to take home a little souvenier, a little cactus or something as a souvenier and he said if they had to spend a couple bucks to make a thousand, that that is what he was expecting.

Q Did you ever see a customer coming in and saying, look what I found, an arrowhead?

A I didn't see very many customers come in period.

Q Or a false cactus?

A I didn't see them as they came back from the land.

Q How about pieces of pottery?

A Sir, I never saw them and I didn't go out on the land.

Q You testified the statement that you say salesmen made at these OPC luncheons or dinners, is that right?

A Yes.

Q And you heard those?

A I heard some of them, yes.

Q No question about that?

A Yes, there is no question about that.

Q Can you identify any salesman that ever made a statement to which you testified to this morning?

A Yes.

Q Who?

A There was one by the name of Joe Meuller. There was another salesman by the name of Mr. Calhoun who I was sitting very near and the people got very irate. Salesmen changed very fast, but two particular people that I remember well.

You know, there were others. There was Eddy Tontoia, lots of them.

Q You heard all these people?

A If they were sitting up close to the table --

Q My question is, did you hear all these salesmen say whatever you said?

A At different times, yes, different things.

Q You recall this other testimony that you gave when you were asked could you really hear what was going on and your saying, some of it I could, I could not tell you that Mr. So and So said exactly this?

MR. DEVORKIN: What page?

MR. FLEMING: 2250.

Q Do you recall being questioned in this other proceeding about these conversations you have testified you heard?

A That is true. I couldn't, not in a room of ten tables.

Q Do you recall being asked, could you really hear what was going on?

"A Some of it I could. I couldnot tell you that Mr. So and So said exactly this. On some occasions if they got loud I could tell you so and so said this, but what they were saying you will have to get the salesmen to tell you."

A Yes.

Q Did you so testify under oath?

A Yes.

Q In 1976?

A Yes.

Q In another proceeding?

A Yes.

Q Did you also testify as a matter of fact the sales presentations at OPC were very low key?

A Basically they tried to keep them that way.

Q Did you testify --

A Yes, I did.

Q In fact, didn't you testify at that other proceeding in 1976 that you had no specific recollection of the presentations that were made at the La Placeitas Restaurant?

A LaPlaceitas?

Q Did you not testify in that other proceeding in 1976 that you had no specific recollection of the presentations at that restaurant?

A I believe I testified there to what the basic--

Q My question is --

A -- thing was.

Q My question is, did you testify that you could not specifically recall the LaPlaceitas Restaurant presentation?

A Which presentations? The ones from the salesmen or the one the sales manager was giving? You see the salesmen also had something they said.

Q I wasn't there.

A Okay.

MR. DEVORKIN: She is asking Mr. Fleming which one he is referring to. I think it is a fair question.

THE COURT: Why don't you put the question and answer to her.

MR. FLEMING: I am going to, your Honor.

Q Question at 2228:

"Q Do you recall any specific sales presentations you overheard?

"A Yes, quite a few.

"Q At the LaPlaceitas Restaurant?

"A Yes, I mean, I couldn't -- you mean specifically?

"Q Yes."

MR. DEVORKIN: I object. It is out of context.

THE COURT: He can ask any question he wants. You can ask on redirect any question you want.

MR. DEVORKIN: There is a question before asking her which presentation he is asking her about.

THE COURT: Why don't you wait for your redirect.

THE WITNESS: I still don't understand what you are trying to ask me, sir.

THE COURT: He is merely asking you whether you were asked certain questions and did you give certain answers at a prior proceeding. That is all you are being asked.

A I did testify at a prior proceeding.

THE COURT: Wait a second.

Q I will go back to page2227.

THE COURT: Nobody is asking you whether you did testify. The question is very simple and very narrow.

At this prior proceeding were you asked certain questions and did you give certain answers. The answer is either yes or no, you were asked the question and you gave the answer or you weren't asked the question and you didn't give the answer.

THE WITNESS: Okay.

Q I will go back to page 2227:

"Q What was the first thing those land consultants did?

"A They jumped up and said hold 23, hold No. So and So and give me a second hold on 4, that is what they did so you know.

"Q Did you have an opportunity to observe any presentations given by the land consultants at LaPlaceitas Restaurant?

"A I was sitting within six feet from where they were talking, where the tables -- there were like two or three tables which were within six feet of where I was sitting.

"Q Do you recall any specific sales presentations you overheard?

"A Yes, quite a few.

"Q At the LaPlaceitas Restaurant?

"A Yes, I mean I coulnd't -- you mean specifically?

"Q Yes.

"A I would have to say no. That wouldn't be fair. I would have to say specifically I could not exactly. I know the general pitch they gave them, but I couldn't say so and so said to so and so."

A Yes, I testified to that.

Q Under oath in 1976?

A Yes.

Q You testified you worked in Old Town between May and September of 1970, isn't that right?

A It might have been from May until -- we stopped -- we didn't completely stop working Old Town. We were working it when the tourists were there.

Q The summer of 1970?

A Pardon? The summer and fall, yes, April I started right away.

Q You testified that is where the LaPlaceitas presentation was put?

A Yes.

Q That came out of the Old Town solicitation?

A Yes.

Q You testified this morning that the next year, 1971, you couldn't go back to Old Town, isn't that right?

A That is true.

Q And you gave certain reasons about an ordinance or something?

A I was not allowed to give the reasons.

Q Did you testify this morning about an ordinance?

A Yes, I think I mentioned it.

Q You testified about a conversation you had in that regard with a representative of Rio Rancho?

A Yes.

Q Who was that representative?

A I believe it was John Dougherty. I know it was with Jim Wall and I believe it was John Dougherty and Gene Hendrick.

Q Who did you name this morning?

A Probably Jim Wall, Gene Hendrick and Dougherty.

Q Do you recall who you named as the person?

A John Wall,Gene Hendrick and John Dougherty.

Q That conversation I take it had to do with why the parties at LaPlaceitas were cancelled in part?

A The parties were not cancelled. The street solicitation was.

Q Weren't the parties also discontinued?

A Not at thattime. They had been discontinued back in the fall.

Q These conversations you talked about this morning did they include why the dinner parties and the luncheon parties at LaPlaceitas had been cancelled?

A Would you repeat that?

Q Did the conversations you testified to this morning include why the dinner parties at LaPlaceitas Restaurant had been cancelled?

A No, I don't think they did. They might have.

Q What is your best recollection?

A Today?

nd t6a

Q Did you have a conversation about the cancellation of lunches and dinners at La Plasta Restaurant with anyone from Rio Rancho?

A Yes, all through there we talked about it.

Q You did. You are sure of that this morning?

A We talked about -- the main thing was why we couldn't go back and solicit it.

Q My question was, did you discuss with people at Rio Rancho why the dinner parties and lunch parties at La Plasta were cancelled?

A They only had lunches there. They didn't have dinner parties there.

Q Did you discuss with people at Rio Rancho the cancellation of the lunches at that restaurant?

A Probably.

Q What is your recollection?

A Of what we talked about that day?

Q Whether you discussed that with anyone from Rio Rancho.

A I will have to say I really don't remember. I remember talking to them why I personally could not go back down there and solicit and that's what I remember talking to them about. That was the plain thing. We probably talked a lot about other things.

Q I am talking about the lunches.

A I don't remember.

Q By the way, you did testify that Rio Rancho did invite Albuquerque residents to come and look at Rio Rancho, is that right?

A That's true, they did.

Q Albuquerque residents were not excluded?

A On my tour they were.

Q I am talking about from your solicitations. Rio Rancho actually had a program to interest Albuquerque residents in Rio Rancho?

A On the mail-out program, not on the tour.

Q I am not talking about the tour. I am talking about a program.

A Yes.

Q They had an actual program where they invited Albuquerque residents to come out for a presentation?

A Yes.

Q And to look at the land?

A Yes.

Q They did not exclude people who lived in Albuquerque from their property?

A No.

Q Or from their sales program?

A No.

Q By the way, you moved to Albuquerque in 1947, did you not?

A Yes.

Q How big was the city then?

A It was very small.

Q 25, 30,000 people?

A Sir, I was five years old. I have no idea.

Q You can't remember?

A No, I don't.

MR. FLEMING: I have nothing further.

THECOURT: Mr. Arkin.

CROSS EXAMINATION

BY MR. ARKIN:

Q Mrs. McCorkle, did you say that you sold turquoise?

A Yes, I do.

Q As a business?

A No, as just a parttime little hobby. I just started in August.

Q You sell it for a profit?

A Yes.

Q Do you obtain your turquoise in New Mexico, I take it?

A Yes, I do.

Q That's where you learned about turquoise?

A What little I know about it.

Q Do you sell the people in China Grove, North Carolina?

A Yes, I do.

Q Local people?

A Well, I sell it in Charlotte, North Carolina, Raleigh.

Q Those are the big cities in North Carolina?

A Yes.

Q Do you sell them to stores or people on the streets or how?

A No, it is sold at flea markets and I also have dealers that sell and I don't know where they sell, at stores and places, I sell it to them. It's a very small business.

Q Do you sell to people who use your turquoise directly or just to wholesalers?

A How do you mean to use it?

Q Do you sell to people who wear it like you are wearing it?

A I sell it to anyone who wants to buy it and I sell it at wholesale prices.

Q You tell your customers it is wholesale, correct?

A No, I don't. I tell them here it is and if they want it they can buy it.

Q You don't tell them it is wholesale?

A I don't tell them anything. I just say, this is the jewelry that I have and if they like it, they buy it and it is very simple.

Q You don't discuss price with them?

A The prices are on everything that I sell.

Q But it's wholesale?

A It basically is priced at wholesale prices, yes.

Q Do you tell people from where you obtain the turquoise jewelry?

A If I know where it came from, if it's a signed piece, I tell them what I know about it.

Q Do you tell people that it's authentic turquoise jewelry?

A No, I do not.

Q Where do you obtain your turquoise jewelry from?

A From Albuquerque, New Mexico.

Q From a particular source?

A Yes, I do.

Q Who is that?

A Turquoise Joe on Constitution and Lo Mas. Mr.

Chuck Miglee and I and Iko and my brother Butch Letterwood. Occasionally when the Indians come in from the flea market and he can buy it at a good price, he buys it for me.

Q Also the turquoise you sell is Indian made?

A I wouldn't say any of it is. I really wouldn't.

MR. DEVORKIN: Your Honor, isn't that a little collateral?

THE COURT: I think it is sort of wandering away, Mr. Arkin. Come on back to the main stream.

MR. ARKIN: All right, your Honor.

Q Mrs. McCorkle, did you testify that you were instructed when you first began work for Rio Rancho not to invite Mexican-Americans?

A Yes, sir, I was.

Q Excuse me, let me finish my question before you answer it. Not to invite Mexican-Americans to your lunches or presentations because they would know the value of land?

A I testified that Mr. Roth told me that, sir.

Q Those were your instructions?

A That was not my original instruction, sir.

Q When did you receive the instructions regarding Mexican-Americans who knew about land in Albuquerque?

A Okay, my original instructions came from Wayne

Riggs.

Q Did you testify that Wayne Riggs gave you those instructions?

A He gave me the instructions that they were not to come to the party because they created problems in the room. Yes, he did say that.

Q It wasn't Mr. Roth who told you that, it was Wayne Riggs when you first began to work for Rio Rancho?

A Yes, sir, that's true.

Q He said that's because these people knew about land values?

A Yes, sir.

Q That's what he said to you?

A That's true. Mr. Roth did not say that.

Q That was in 1970 when you began work for Rio Rancho, is that correct?

A That was true.

Q Later as you were working for Rio Rancho you participated in a program, in 1971, called a mail-out program, didn't you?

A Yes, I did.

Q The mail-out program was where you went around to various business people in Albuquerque and invited both employers and employees up to Rio Rancho property, isn't that right?

A That's true.

Q The purpose of this solicitation was to sell these people property, wasn't it?

A That's true.

Q In addition, you said there was a program instituted after this particular program where people who lived in the better neighborhoods or the richer neighborhoods of Albuquerque were also invited to Rio Rancho?

A That's true.

Q They were invited there to sell them land, is that right?

A That's true.

Q You say that Mr. Wall said to you at one point, I am discontinuing this program because he did not believe the terrible turnout of these people, is that correct?

A That's true.

Q He didn't believe how few people turned up, right?

A Compared to what should have turned up.

Q Is that what he said to you?

A He said he was amazed that so few people turned up at these dinners.

Q He was amazed at that, right?

A Yes.

Q You would agree, wouldn't you, that business people in Albuquerque, employees and employers, knew about Albuquerque and land around Albuquerque, wouldn't you say so?

A I would say so.

Q They would know as much as somebody who happened to be a Mexican-American by birth, wouldn't they?

A Yes.

Q People who happened to live in the richer neighborhoods of Albuquerque, they too would know about land around Albuquerque, wouldn't they?

A Yes, they would.

Q Yet you say you were instructed when you first went to exclude people who knew about land in Albuquerque and then later on Mr. Wall was surprised, he was surprised that people who lived in Albuquerque, who worked in Albuquerque did not come to the various presentations at Rio Rancho?

MR. DEVORKIN: I think the question is misleading, your Honor.

THE COURT: It is too involved, Mr. Arkin.

A Yes.

MR. ARKIN: I will cut it down then.

Q Is it your testimony, Mrs. McCorkle, that you were told in effect to keep sophisticated people away, people who knew about land away from your lunch presentations, is that right, yes or no?

A No, because that's two different times. You are talking about two different kinds of tours.

Q When you first came to work for Rio Rancho.

A Tours or the dinners?

Q I am talking about when you first came to work for Rio Rancho.

A On the tours, yes.

Q On the tours, that's what you were told, is that right?

A Doctors were welcome, sir.

THE COURT: Don't argue with the questioner.

THE WITNESS: I don't know what he wants.

THE COURT: He is just asking you what you were told when you first came to work. That's simple.

THE WITNESS: Okay.

Q You say doctors were welcome?

A Yes.

Q Doctors were something different than lawyers?

A Yes, sir.

Q I just want to establish that. You were told, were you not, to attempt to avoid people who knew about land in the Albuquerque area, isn't that so?

A No, that's not so.

Q Mexican-Americans?

A Them specifically.

Q Because they would know about land?

A No, because they disrupted the room and because they would say things like my grandmother sold property for $100.

Q Didn't you testify yesterday that you were told to avoid Mexicans because they knew about land values in the Albuquerque area? Wasn't that your testimony yesterday?

A Yes.

Q Yes, it was, wasn't it?

A Yes, it was.

Q Then later this very same company, Rio Rancho, instructed you to solicit people who lived and worked in the Albuquerque area to come to Rio Rancho, isn't that true?

A On a different program, yes, it is true. On a different program geared differently.

Q Mr. Wall, who was your superior, was surprised that not too many people came, is that right?

A Sure, people there aren't going to buy Rio Rancho.

THE COURT: Please listen to the question. We will get through much more quickly.

THE WITNESS: I am sorry.

Q Now, you say that you once attended a sales presentation or a speech by Irv Roth, is that correct?

A Yes,sir.

Q During that speech you say he described techniques used in New York to sell land?

A Used by Roth Realty.

Q In New York. Do you know where Roch Realty was?

A In New York, yes.

Q Did you know Mr. Roth came from New York?

A He said he did. I didn't know him before that. I didn't know anything about him.

Q Did he say he came from New York?

A He said he came from Roth Realty.

Q You knew Roth Realty was in New York?

A I did not.

Q Mr. Roth never told you he came from New York?

A I believe he did at one time say that. I don't know where he was from.

Q Didn't he in his speech to you when he first came out to Rio Rancho tell you where he had come from?

A He said that he was from Roth Realty and that New York had sent him out there. Okay.

Q He didn't tell you where Roth Realty was, is that what you are saying?

A I don't know where Roth Realty was.

Q You do remember him telling you about sales techniques utilized by Roth Realty?

A Yes, I do.

Q Without saying where they were utilized?

A There on the property.

Q Do you know that Roth Realty -- is your testimony that you thought Roth Realty was on the property?

A No, the sales techniques, the sprinkling of the arrowheads. They didn't do that here in New York. They did it at Rio Rancho.

Q You say Roth Realty did that?

A He said that they did.

Q You mean you didn't know that Roth Realty sold its property here in New York?

A I knew that they had dinner parties and brought flight tours in.

Q They showed pictures of sprinkled arrowheads?

A No.

Q Now, you testified a little while ago about the tramway. You have been up there lots of times, haven't you?

A Many.

Q About how many times?

A Let's say maybe 100.

Q And you have looked down upon the Albuquerque basin from that area, haven't you?

A Yes.

Q You are able to sell Albuquerque, aren't you?

A Yes. I wasn't very interested in looking down at Albuquerque.

Q You could see it?

A I am sure I did. I cannot say that I didn't.

Q During at least once of those 100 times?

A Yes, during once I am sure I did.

Q You also saw the road from Albuquerque which went up to Rio Rancho, isn't that so?

A Yes.

Q By the way, when was the last time you were up on the tramway?

A In about 19 -- I don't remember. I am sure it was about Christmas, I think it was maybe Christmas time of 1972.

Q Christmas time of 1972 --

A I will have to say I don't know because I cannot testify to that as being true. I don't remember.

Q It was sometime in 1972 you were up at the tramway, weren't you?

A Yes.

Q In 1972, when you were up at the tramway you were still working for Rio Rancho?

A Yes.

Q You had been to Rio Rancho during your employment on a rather daily basis, hadn't you?

A No. I did not go to Rio Rancho property on a daily basis. I worked out away from it.

Q On a weekly basis?

A No.

Q Monthly basis?

A Monthly.

Q You were out there during the year several times, weren't you?

A Yes.

Q Did you observe the property at Rio Rancho during the year 1972?

A Yes.

Q Do you know what kind of development there was there?

A Yes.

Q Will you tell his Honor and the jury what development you observed at Rio Rancho in 1972?

A Well, I believe that's the year that Ampex moved out there into that empty building. They had an empty warehouse out there and Ampex moved out there.

Q TNat was not a building which was built for Ampex in particular?

A I don't know, sir. I was not involved in that. All I did I was in the OPC department.

Q You just testified that you thought it was an empty warehouse.

A An empty building. I think it was there before Ampex moved in, if I remember.

Q Was it built for Ampex?

A I don't know.

Q So when you said it was a warehouse, you didn't know that, you were just adding that in, weren't you?

A It looked like a warehouse.

Q A big square structure?

A Yes, a big building.

Q A roof?

A Yes.

Q Glass windows in the front?

A I didn't see the front of it. I only saw the side.

Q Did you see the sign on it?

A No, I don't ever remember seeing a sign on it.

Q What else did you see aside from the Ampex building?

A A shopping center went in and the new buildings for the Rio Rancho staff went in there.

Q What else?

A There were some new model homes going up.

Q Do you know how many homes there were in unit 16?

A No.

Q Do you know there were hundreds of homes in unit 16?

A I have no idea.

Q Do you know there were streets and streets of homes in unit 16?

A Sir, I have already told you that I didn't even go out on the property. I have never been past the country club where I went out for a few drinks.

Q Mrs. McCorkle, when you drive up on Coors Boulevard up to the property, do you pass a gateway of Rio Rancho?

A Yes.

Q What do you see on your left?

A You see houses.

Q Do you know what unit that is?

A No, I don't.

Q Have you been to the Panorama Inn?

A Yes, I have.

Q Have you looked across the street north from the Panorama Inn?

A North or east?

Q East.

A Yes.

Q What do you see there?

A I don't remember. Over in that area is the secretarial building that went up and there was -- when I left they were putting in a trailer park.

Q What about Corrales Heights? Did you see that too?

A I was not interested. I really didn't pay any attention.

Q You were helping to sell this property but you weren't interested, is that your testimony?

A I worked for the OPC department. All we sold was vacant land. We didn't sell houses.

Q You didn't want to see the developed area, is that right, you were not interested in that?

A I had three kids and I was trying to work for Rio Rancho about 12 hours a day and I didn't have time to do all that and run around that empty property.

Q You had some time to go up to the country club to have a few drinks?

A I was taken there by my employer Madeline Betts.

Q You had time to have a few drinks?

A We were paid to go there. They treated us to lunch.

Q You went into the country club, did you walk around the country club?

A We went inside.

Q You had lunch?

A And we had lunch.

Q Did you have lunch in a country club? The dining room has large picture windows surrounding it, doesn't it?

A Yes, in the dining room where we sat that was true.

Q You looked out those picture windows towards the Panorama Inn and the road leading up from Coors Boulevard. What do you see?

A I saw the country club golf course.

Q Do you see any houses?

A I didn't, no.

Q Did you see any neighborhoods?

A There were neighborhoods in that area.

Q On the Rio Rancho property?

A On the Rio Rancho property.

Q They are spread out over a considerable piece of land, aren't they?

A You could say that.

Q Now, going back to the tramway.

A Yes.

Q You say that there was a bluff, meaning a large piece of land which rises from a flat surface, which covered up the entire developed area so you could not see it?

A You couldn't see the Panorama Inn.

Q But you could see the rest of the developed area of Rio Rancho, couldn't you?

A If you looked, sir, you could. When I was there I didn't look.

Q Ma'am, you agree, don't you, that you have to look to see?

A Yes, you would have to look and be pointed it out.

Q You testified a while back that there was a four-month period in Albuquerque, New Mexico, during which they had blizzards and rain storms and inclement weather, is that so?

A That's basically true, yes.

Q Would you say to me based upon your experience in living in Albuquerque all the years you did how many days of snow Albuquerque has?

A I have no idea.

Q How many days of sun -- not sun, but rather rain Albuquerque has?

A I have no idea.

Q Would it be fair to say that snow was pretty unusual in Albuquerque?

A That would not be fair to say for the year 1971. We had several blizzards.

Q How about the years 1974 to 1970 and 1972 to the present time?

A When you are a kid, you don't care if it snows or not. You don't have to go to school. That was about all you cared about. You know, I didn't know I was going to be here testifying about it.

MR. ARKIN: All right, we will move on to something else.

Q You testified just a while back when you were being questioned by Mr. Devorkin about the little development at Rio Rancho. Was that your testimony?

A I believe I said there was some development.

Q Some development. You said little development, too, didn't you?

A Maybe in comparison to what I saw on the east side.

Q Now you said when you used to come up to the property that you weren't really interested in looking at the neighborhoods, isn't that so?

A That's true.

Q Yet what you were doing is testifying that there was some or little development without really knowing what you were talking about, isn't that fair to say based on your testimony just a few minutes ago?

A You could probably say that. It wasn't as east as other areas of the city.

Q You didn't look, did you?

A At Rio Rancho? Yes, I did go up and look when I went back in 1976.

Q What did you see there in 1976?

A Well, I saw a bank on the corner of Coors Road and the road going up that was new. I saw several things that were new.

Q You saw the shopping center down at the foot of the hill?

A There at the bank.

Q Near the bank?

A But that's not Rio Rancho. That's Corrales.

Q Across from the shopping center you saw the new high school, did you not?

A I believe there were some things there going up.

Q You went back there in 1976. Was that because you were going to testify here?

A I went back -- well, I also was there in August. I went back to see my mother who lives there.

Q In Rio Rancho?

A Oh, no. She lives on Rio Grande Boulevard.

Q You say you went to Rio Rancho in 1976?

A Yes, I did.

Q Did you go there in order to be able to testify here today?

A No, sir, I didn't know I was going to testify.

Q You went back for sentimental reasons?

A No.

Q Out of curiosity?

A No, I was on my way to the Haymous Mountains.

Q From Albuquerque to the Haymous Mountains is a short-cut through Rio Rancho?

A It is.

THE COURT: I think we will suspend for lunch. We can't resume until 2:30 because there is an induction of a new judge of this court right after lunch so we can't resume until 2:30 this afternoon.

(Luncheon recess.)

AFTERNOON SESSION

2:30 p.m.

(In the robing room; counsel present.)

MS. HYNES: Your Honor, after Mrs. McCorkle is finished with cross, the government intends to call Lawrence Perlmutter as a witness.

Mr. Perlmutter is vice president of AMREP Corporation. He is stil employed by AMREP Corporation.

He is testifying under a grant of immunity. He refused to speak to the government without a grant of immunity. He has spoken to the government on several occasions.

The application is to have Mr. Perlmutter, under Rule 611, that the government be permitted to ask Mr. Perlmutter leading questions because he is a witness used with an adverse party and the rule provides that when a witness is used with an adverse party that the interrogation may be by leading questions.

I do not expect my entire examination to be by leading questions.

THE COURT: I don't think that I have to rule on that until he indicates that he is adverse. When he does that, then you can make your application.

MS. HYNES: Your Honor, the rule doesn't say -- let me just read the relevant sentence --

THE COURT: I know the rule.

MS. HYNES: It says or.

THE COURT: But it is my discretion.

MS. HYNES: It says when the witness is used with an adverse party, he may be interrogated by leading questions.

THE COURT: May. I say until he shows that he is an adverse witness, I won't allow it.

MS. HYNES: All right.

(In open court; jury present.)

DARLENE McCORKLE, resumed.

THE COURT: You may proceed.

CROSS EXAMINATION (Continued)

BY MR. ARKIN:

Q When we left off before lunch, we finished talking about weather.

Let's go on to development a bit.

By the way, Mrs. McCorkle, do you read newspapers regularly?

A No, sir, I do not.

Q Did you while you lived in Albuquerque?

A No, sir.

Q About how often did you read newspapers?

A I did not at that time read newspapers when I lived in Albuquerque.

Q You read it pretty rarely, then?

A You could say that.

Q And you got a lot of your news through television and that kind of source, is that right?

A And the radio.

Q So that when you testified before on direct examination in response to Mr. Devorkin's questions that you saw listings for Rio Rancho property continually, you didn't really mean to say that, I take it, right?

A I saw them when I was looking for a house, I looked in the newspaper.

Q How long a period of time were you looking for a house?

A I started looking for a house in the later part of the summer and I continued looking for a house until I purchased one.

Q And how long was that?

A I purchased one about -- I think I found the house in December -- it was not built, it was built for me. I bought a piece of empty property and they built a house for me.

Q Were you reading the papers every day when you were looking for a house?

A Yes, I did.

Q Did you read the want ad section? Is that what you looked at?

A No. I looked under real estate.

Q Did you look under real estate houses or real estate land?

A Both.

Q Did you intend to build your own home?

A I hoped that I would be able to find a house that I could have, yes.

Q You mean you wanted to build a home or buy one?

A I wanted to build one or buy one, whichever I could get the best deal.

Q The best deal meaning the difference between how much it would cost to construct a home and how much it would cost to buy a home?

A No, the best deal meaning how much of a house I could get for what price and footage.

Q Did you have any figures given to you on how much it would cost to construct a home?

A Yes, at that time building a house in Albuquerque cost about $14 a square foot.

Q And you went to certain builders in Albuquerque?

A I went to Mr. Chevas, who did build the house that I bought.

Q Did you go to a builder named Villa, Villa Builders?

A No.

Q Do you know any other builders in Albuquerque?

A There were a lot of them. There were lots of different -- there was Academy Acres, there was, you know, all kinds of builders.

Q But you only spoke to Mr. Chevas?

A He was building in the price range that I could afford.

Q What was that?

A Anywhere from about 17 to about 21, 22,000.

Q This is for a how many room house?

A It was a three-bedroom house.

Q That didn't include the land, I take it?

A Yes, sir. I paid 17,5 for the house, which was 14.5 a square foot.

Q 1400 --

A 1400.

Q A square foot?

A Yes.

Q And on how much land was that house built?

A It was built on a city lot.

Q Do you know how big that lot was?

A I believe it was 60 by 100.

It was more than that. It was about 60 by 110.

Q And the lot and the house, three bed-room house, cost you 17,500?

A Yes, sir. And I sold it in 1973 for 21,5, the same house.

Q After only having it for two years?

A Yes, sir.

Q And your house is on the west side of Albuquerque?

A Directly west of Albuquerque.

Q You testified a while ago that you were concerned about certain statements which appeared in West Side Story, the movie, isn't that so?

A Which statements?

Q Did you testify that in West Side Story, statements were made about the number of bridges to be put across the Rio Grande?

A No, sir, I did not testify that I was concerned with that.

Q You thought that the statements in West Side story might be inaccurate, did you testify to that?

A No, sir.

I testified to the fact that in the movie it said that there were going to be bridges built across, and I testified that I have not seen any.

Q Do you know who it was in the movie who said that?

A I believe that it was Joseph Montoya, but I'm not sure.

Q Would it refresh your recollection if I were to say it was Richard Straun?

A No, that would not.

Q Do you know who Richard Straun is?

A No, I do not.

Q Do you know that he is a city official of Albuquerque?

A No, I do not.

Q Do you know that what he had to say about bridges were,in his own words were,written by him and not by anybody else?

MR. DEVORKIN: I object to that, your Honor. Mr. Arkin is testifying.

THE COURT: Sustained.

You showed the pictures.

MR. ARKIN: The prosecution showed the picture, The West Side Story. WE showed the other one, your Honor.

Q Mrs. McCorkle, you indicated or stated on your direct testimony that you learned through your own investigations that land which you had previously thought was not for sale was, in fact, for sale, isn't that so?

A That's true.

Q And you said in particular the land as you went up toward the tramway you had thought was either reserved or otherwise not for sale, but you learned, in fact, that it was for sale?

A That's true.

Q In particular, would you tell us what land on the way to the tramway you found was for sale?

A Yes, I can.

My husband, whom I have married, bought land and resold it in Albuquerque and that's where he made his money, and I went with him during this time and I looked at many pieces of land and at that time he bought them and we have since resold them.

Q You mean he bought land and resold land?

A Yes, he did.

Q How many times did he do that?

A I don't know. I wasn't married to him until 1973.

Q You know he bought and sold land?

A I can tell you what he bought and sold since I married him.

Q Go ahead and do tell us.

A He bought two acres in Volcano -- no, that's when he bought two lots for $1400 and he sold them for $3800.

Q How long did he hold onto those two lots?

A Six months. They were supposedly valued at $7,000 apiece.

Q He bought them for 1400 and sold them for 3800?

A Yes.

Q That is in Volcano Cliffs?

A Yes.

Q Which is on the northwest mesa, isn't it?

A Yes.

Q It is not too far from Rio Rancho, is it?

A It's not --

Q A few miles?

A it's a couple of miles.

Q A couple of miles from Rio Rancho, right?

A Yes.

Q What else did he buy and sell?

A He bought 50 acres at Ojo Caliente for $50 an acre and we sold them for $150 an acre.

Q Where is that?

A Ojo Caliente is above Santa Fe.

Q That is about 70 miles north of Albuquerque, isn't it?

A I think it is a little more than that.

We had real estate brokers looking for us for good deals.

Q And he would buy it and sell it?

A Yes.

(Continued on next page.)

Q And he made money doing that?

A Yes.

Q Vacant land, isn't that so?

A Yes. We also looked at ten acres at the corner of Watebow and Tramway Boulevard, which was for sale, and it was a little bit out of his price range at that time. I was with him when he looked at it.

Q Do you know how much land is available for sale in the tramway area?

A No, but I know there is a lot of houses being built there now.

Q You say that you were told at one time that certain land up there was tied up in certain either grants or Indian reservations or federal reservations, is that so?

A No, sir. On the east side I said that the land was marked reserved.

Q Reserved? Do you know what a land grant is?

A Yes, sir.

Q Did you ever hear of the Elenagallegos land grant?

A No, sir.

Q Do you know that that is a land grant near Albuquerque?

A No, sir, I don't.

Q That it borders the Siandia Reservation?

A No, sir. I know nothing about it.

Q Do you know about the Siandia Reservation?

A I know about the Siandia Indian Reservation.

Q Where is that?

A On the north side of Albuquerque.

Q That is Indian land, isn't it?

A Yes, sir.

Q And that is not to be sold and cannot be sold, isn't that so?

A I believe that is true.

Q Did you ever hear of the Atrisco grant?

A Yes, I did.

Q Where is that?

A The Atrisco grant?

Q Yes.
Where is that?

A That land is located to the west of Albuquerque.

Q And to the south of Rio Rancho?

A Yes.

Q Do you know what the Atrisco land grant is?

A Yes.

Q What is it?

A It was a piece of land set aside many years ago that was granted by the Spaniards and it was to be divided between the heirs and it is being divided now and being sold.

Q Do you know about the lawsuits in relation to the Atrisco grant?

A I knew about them ten years ago.

Q Do you know about them today?

A No, I do not. I have not been there.

Q Do you know whether they have been resolved today?

A Apparently -- I saw it advertised for sale. Apparently they have done something.

Q When did you see it advertised for sale?

A Most recently when I was there in 1976, in August.

Q Do you know how large the Atrisco grant is?

A I wouldn't have any idea.

Q You don't know what portion, if any, is for sale, do you?

A No, I don't.

Q Did you ever hear of Albuquerque Acres?

A No, I haven't.

Q Do you know if that was developed on the northeast part of Albuquerque?

A I knew where Academy Acres is. Is this what you are discussing with me?

Q I asked you about Albuquerque Acres.

A No, I don't.

Q You spoke about Volcano Cliffs, is that right?

A Yes.

Q Have you been out there before?

A Yes, I have.

Q You say that is within the Albuquerque city limits?

A It has city water and city sewage.

Q Do you know whether it is in the city limits?

A Yes, because I think there is a law you can't have city water and city sewage unless you are in the city limits.

Q How far do the city limits go from midtown or the center of Albuquerque toward the west, do you have any idea?

A No.

Q The city limits include Volcano Cliffs, that is your testimony, isn't it?

A My testimony is I would it does since they have city water and city sewage.

Q You don't know how far beyond Volcano Cliffs the city limits go?

A No.

Q You don't have any idea about the size of Metropolitan Albuquerque, do you?

THE COURT: I don't know what you mean by Metropolitan Albuquerque.

MR. ARKIN: That's a --

THE COURT: Metropolitan New York is Nassau, Suffolk, Westchester, Rockland, parts of New Jersey.

A You are looking at --

MR. ARKIN: There is a definition, your Honor. That's why I asked the question.

I will not ask the question of this witness any further, but I will bring it out in another way.

Q Mrs. McCorkle, you started as a hotel solicitor for the OPC program, didn't you?

Excuse me. You started as a solicitor on the streets for the OPC program.

A Yes, I did.

Q That's where you went to LaPlaceitas for lunch and that kind of thing?

A Yes.

Q You were working LaPlaceitas and the Old Town for how long?

A From April until the late fall. We actually quit working every day, you know, staying there, but we did continue working at the times that thetourists came in the winter until it got really bad.

Q Then you became a solicitor at the hotels, is that correct?

A Yes.

Q You did that for a period of time?

A Yes. After the mail-out program, I was given a set of hotels that was my business.

Q And you left the company in November of 1972?

A Yes.

Q Just prior to the time you left, the OPC hotel program was terminated, wasn't it?

A Just -- pardon?

Q Just prior to the time you left.

A No, sir.

You see, every winter they started the other thing where they went to a mail --

Q Was the OPC program ever terminated, to your knowledge?

A After I left it could have been, but --

Q You didn't know at the time --

A It was not at the time I left, no.

Q Did you know that the company at the time or just before you left wanted to convert the hotel program into a telephone program?

Do you recall that?

A That was not discussed at the time that I was there. It was handled after I left by Mr. Greenstein.

Q I see. But you were not involved in that at all?

A No. That was his choice.

Q And you were not asked to participate in that at all?

A No.

Q You were not asked to work on the telephone program?

A At the time I left, they asked me to train a man in the hotels to take over my place by the name of Harold Noble.

Q I am asking for a yes or no answer now, please.

Were you asked to work on the telephone program?

A They did have a telephone program.

THE COURT: No, no. The question is very

simple.

THE WITNESS: Yes.

THE COURT: Were you asked to work in it?

THE WITNESS: Yes.

Q But you refused that, didn't you?

A What, to work on the telephone program?

Q Yes.

A Refused -- I don't remember.

Q Didn't you refuse to work in that program because it would have caused your salary to be reduced from $150 to $80 a week?

A Okay. Okay, I did refuse to have my salary brought down from $150 to $80 a week, yes.

Q And to work on the telephone program, is that correct?

A That was not why I refused to work on the telephone. I just refused to have the salary cut.

Q And to work on the telephone program at that salary?

A Sure. Why, would you take that salary cut?

Q Did you make requests of the company or of somebody you worked for, like Mr. Greenstein, for more money to work in that program? Yes or no.

A I don't remember.

No, I -- I don't really remember.

Q Do you recollect whether Mr. Greenstein turned your request to have a higher salary?

A My leaving the company had nothing to do with the salary.

THE COURT: That isn't the question you are being asked.

Now, please, this is the fourth time I had to interrupt.

You are an intelligent person. Listen to the question and answer it.

THE COURT: Okay.

THE COURT: Don't volunteer anything, don't suppose anything, don't think you are in a battle of wits with the cross examiner so you are trying to anticipate what he is looking for; just answer the questions directly.

MR. ARKIN: Please repeat the question.

A I'm waiting. I don't know what the question is.

Q The reporter will repeat the question. I am not asking you to repeat the question.

A Would you please repeat the question?

(Pause)

Q Did Mr. Greenstein refuse to have your request to have the salary raised?

A No, he did not.

Q Did you ever tell Mr. Greenstein that you, to paraphrase it, that you must now look for a job which has a higher salary with opportunity for raises?

A Yes, I did.

Q When you resigned --

A Not personally.

Q What?

A Not personally, I wrote a letter.

Q You wrote him a letter about that?

A Yes.

Q When you resigned the company, did you offer your assistance in helping Greenstein regain the motel and hotel program which you had been participating in?

A Yes, I did.

Q In that same letter?

A I believe it was in the same letter.

Q Did you ever ask Mr. Greenstein to contact you at home after you signed for anything you might be able to do to help with the OPC program?

A I don't remember what the letter said, but I wrote a very nice letter explaining why I was turning down his offer.

Q Do you recollect whether you said that or not?

A I do not. I haven't seen that letter in four and a half years.

Q Did you tell Mr. Greenstein that you left the OPC program with deep regret?

A It's probably true. I was going to miss the money. I was walking out without --

Q Did you ever tell him that?

A I don't know. I have not seen the letter.

Q And the question yes or no.

A I have to say I don't know.

Q Did you ever tell Mr. Greenstein on resigning, that you had a great satisfaction for being part of the program and making it work?

A I don't know what I said in the letter.

(Defendant Howard Friedman and Henry Hoffman Exhibit CR marked for identification) xxx

Q Mrs. McCorkle, at one time you were known as Darlene E. Wilkinson, is that correct?

A That's correct.

Q I show you the second page of Defendant Exhibit CR for identification and ask you if you can identify your signature there?

A That's true.

Q Would you please look at this document and tell me if you are able to recognize it.

A I really cannot read it, but I am sure if I signed it this must be what I wrote.

Q Would you make an effort to try and read it.

(Pause)

A I cannot really read it. I am sure you can. I will let you. I mean I don't care.

Q You cannot make any words at all out in this letter?

A I can make a few words, but I cannot read all of it.

Q Are you able to read the last two paragraphs on the second page?

A I can read some words, but I cannot read all of it, no.

Q Try to read to yourself the words you are able to read.

A I can read it.

Q You can read that?

A Yes.

MR. ARKIN: We offer CR for identification in evidence.

(Pause)

MR. DEVORKIN: I have no objection.

Is there a better copy of this letter because I have trouble reading it.

THE COURT: Mr. Arkin, do you have a better copy of this letter?

MR. ARKIN: I do not, your Honor. I am happy to hand it up to your Honor to look at.

THE COURT: Do you have one?

MR. ARKIN: I do not have one, your Honor.

THE COURT: He has no objection.

MR. DEVORKIN: Most of it can be read, your Honor, but it is hard.

THE COURT: All right

(Defendant Howard Friedman and Henry Hoffman Exhibit CR received in evidence)

THE COURT: All right.

Q Mrs. McCorkle, you said you were able to read the last two paragraphs. Would you read the last two paragraphs to the jury, please?

MR. DEVORKIN: I think the whole document should be read to the jury.

THE COURT: He has a right to have read what he wishes to have read. If you want to have something read, you may read it.

MR. DEVORKIN: All right. As long as we are reading that, if we could read the whole document.

THE COURT: That is all he wants to put in.

Q Please.

A "I feel that since I was hired at $80 a week and $5 per unit, having not received a raise in salary only in"-- I can't read that -- "a decrease in unit pay"-- well, one word blank -- "this past fall when I was asked to become the supervisor"--blank -- "offered $150 a week I can now not"-- blank -- "again to less than that I was originally hired at" -- blank, it loks like"year ago. I" blank "now look for a job which has a higher salary with opportunities for raises. If the base salary changes or if you feel if you"-- blank-"you need help in regaining-- I am sure it must be hotel and hotel program, "I would like to take this opportunity to offer"--blank -- "please feel free to call on" -- blank-- "my home 842-6339 for anything which I" -- blank -- "be able" -- blank-- "to for the OFC program. It is with deep regret that I have to leave the program" -- blank -- "I" -- blank -- "In the very beginning even though I have not gotten rich, I have had a great satisfaction from being part of the program and making it work."

MR. DEVORKIN: I will wait, your Honor.

Q That letter which you sent to Mr. Greenstein, that was the same Mr. Greenstein to whom you complained about his sales techniques?

A That's right.

MR. ARKIN: I have no further questions.

THE COURT: Redirect.

REDIRECT EXAMINATION

BY MR. DEVORKIN:

Q Mrs. McCorkle, you were asked on cross examination I believe by Mr. Fleming about whether you and I spoke yesterday after you testified for a short time; do you recall that?

A Yes, sir.

Q Did we talk last night in my office for an hour or so after you testified?

A Yes, sir.

Q Now, this letter, which is Defendants Exhibit CR in evidence, you wrote this letter after you had complained to Mr. Roth.

A That letter?

Q Yes.

A I wrote that after going to the EEOC and they advised me to. That is when I wrote it.

Q Just in time --

THE COURT: Nobody is asking you who advised you to write the letter.

A He asked me when I wrote it.

MR. FLEMING: May we strike that answer.

THE COURT: Strike that answer and the jury will disregard it.

Q I just mean sequentially. The letter chronologically was written after, sometime after you complained to Mr. Roth, is that correct?

A Yes, it was.

Q I take it after you complained to Mr. Roth there came a time when it was requested that your salary be decreased, is that correct?

A Yes.

Q That was also after you complained about Mr. Greenstein?

MR. ARKIN: That is a bit leading, I would suggest. I object.

THE COURT: Overruled.

A Yes.

Q When you wrote this letter, Defendants Exhibit CR, did you have any other support for your children beside your job at Rio Rancho?

MR. FLEMING: I object.

A No, sir.

THE COURT: Sustained.

Q Did your circumstances of leaving Rio Rancho involve a dispute over salary?

A Not entirely, no, sir.

Q There was another issue?

A Yes, sir.

Q That issue you didn't have anything to do with your work for Rio Rancho and your performance or anything like that, did it?

A Not my performance, no, sir.

Your Honor --

Q Just listen to my questions.

Is it fair to say that issue had something to do with the number of days a week you had to work?

A Yes, sir, it did.

Q You were working seven days a week and there were certain reasons you couldn't work seven days a week?

A No, sir.

Q There were some reasons you couldn't work seven days a week?

A Yes, sir, that is true.

MR. DEVORKIN: Your Honor, I am leading for a certain reason.

THE COURT: Ask her.

MR. DEVORKIN: I think the defendants are aware of it.

MR. ARKIN: We object for that very reason, your Honor.

Q Did there come a time when your religious beliefs changed in 1972?

A Yes, sir.

Q What were your religious beliefs, what did they change to?

A In April I was Baptised as a Seventh Adventist and I could no longer work for Rio Rancho seven days a week.

Q Is that one of the reasons you left Rio Rancho?

A They allowed me to work six days a week until Mr. Greenstein took over and he insisted I work seven.

Q You couldn't work seven days a week according to your religious beliefs?

A Yes, sir.

Q You were asked by Mr. Arkin about Volcano Cliffs and the property that you bought and sold there, do you remember that?

A Yes, sir.

Q I believe you testified that you bought it for $1400 and sold it for $3800.

A Yes, sir.

Q I believe you testified that there was another price, $7,000 or $7500 for the same property, is that correct?

A Yes, sir, a lot. It was being sold, you know, that is what they were asking for it.

Q $7500 a lot?

A Yes, it was like $6,000 a lot. That is what the advertised price was.

Q Who was advertising that price?

A The same developers that ran Volcano Cliffs.

Q You sold it for $3800 for both lots?

A Yes, we did.

Q Do you recall being asked about the Siandia Indian Reservation?

A Yes, sir.

Q Do you know whether or not there is any development, that is homes, on the Siandia Indian Reservation properties now?

A Yes, sir, there is.

Q Do you recall Mr. Fleming asking you about how many pieces of property the salesmen would take off the allocation sheet before the sales presentation at an OPC affair?

A Yes, sir.

Q And what would happen if the salesman didn't have a piece of property for his particular customer?

A Yes, sir.

Q Or the right piece of property, do you recall that testimony?

A Yes.

Q Yes?

A Yes.

Q If a salesman needed a piece of property, but didn't have the right piece of property for the customer at his table, what, if anything, could he do?

MR. ARKIN: Objection.

THE COURT: Sustained.

Q What, if anything, did he do?

MR. ARKIN: Objection.

THE COURT: Sustained.

Q Do you recall whether the sales manager in the room had other pieces of property that he could give salesmen if they needed it?

THE COURT: This has been exhausted on both sides. Go on to something else.

Q Do you recall Mr. Arkin asking you about whether or not Albuquerque residents were excluded from the OPC sales presentations?

A Yes, sir.

Q Restricting yourself to the OPC presentations--

MR. FLEMING: I missed that last question.

THE COURT: Read it back.

(Record read)

MR. FLEMING: I just have no recollection of that, your Honor.

MS. HYNES: The jury's recollection controls and not Mr. Fleming's.

THE COURT: He is an attorney. He is entitled to make an objection.

MR. FLEMING: Objection.

THE COURT: He objects. I didn't hear that testimony.

Q Mrs. McCorkle, you recall the testimony about Rio Rancho inviting Albuquerque residents to their sales presentations?

A Yes, sir.

Q Now, restricting yourself to the OPC presentations exclusive of the winter mail-out program you have described --

A Yes, sir.

Q -- were Albuquerque residents invited to that sales presentation?

MR. FLEMING: Objection.

THE COURT: Overruled.

A No, they were not allowed on OPC tours.

Q The mail-out program in the winter, was that just for Albuquerque residents?

A Yes, sir, it was.

Q There weren't out of staters in that program?

A No, sir, it was just for the residents.

Q Do you recall Mr. Fleming asking you some questions about testimony you gave on a prior occasion?

A Yes, sir.

Q And I believe in response to Mr. Fleming's questions you testified that on that occasion you didn't testify that Mr. Hodgins had explained to you that people were buying this property or that they were selling the property as a dream.

Do you remember testifying to that?

A Would you repeat that?

Q Do you remember testifying to Mr. Fleming's questions that when you testified on the prior occasion you did not testify about the conversation you had with Mr. Hodgins about selling a dream at Rio Rancho?

A That is true.

Q And you also testified in response to Mr. Fleming's questions that you didn't testify previously about statements that were made in the sales presentation at OPC being inaccurate.

A That is true.

Q Do you recall testifying to that?

A Yes.

Q When you testified on that prior occasion, were you asked questions about that?

A No, sir.

MR. FLEMING: Objection.

THE COURT: Overruled.

MR. DEVORKIN: Nothing further.

RECROSS EXAMINATION

BY MR. FLEMING:

Q Since you now remember that you spoke with Mr. Devorkin for an hour after your testimony last night, precisely how long did you speak with Mr. Devorkin last night?

A It wasn't very long. I was very nervous and all he did, you know, was tell me not to be nervous and not to worry about it and things like that.

Q You did that for an hour or so?

A Somewhere around there. He told me where to go for dinner and told me how to get back to my hotel because I took the subway and you know we just talked.

THE COURT: You may step down.

MR. ARKIN: May I have one question, your Honor?

THE COURT: No, next witness.

(Witness excused)

THE COURT: Next witness.

MS. HYNES: The government calls Lawrence Perlmutter.

LAWRENCE PERLMUTTER, called as a witness by the Government, being first duly sworn, testified as follows:

THE COURT: You may proceed.

MS. HYNES: Thank you, your Honor.

DIRECT EXAMINATION

XXXX BY MS. HYNES:

Q Mr. Perlmutter, I am going to ask you to keep your voice up.

What is your full name?

A Lawrence Perlmutter.

Q How old are you?

A I am fifty-five years old.

Q Where do you live?

A 2100 Lynwood Avenue, Fort Lee, New Jersey.

Q What is your current employment?

A I am vice-president administration and secretary of AMREP Corporation.

Q How long have you been employed by AMREP Corporation?

A Since May of 1969.

Q Are you a director of AMREP Corporation?

A No, I am not.

Q Have you ever been a director of AMREP Corporation?

A No, I haven't.

Q Are you an officer of Rio Rancho Estates, Inc.?

A No, I am not.

Q Are you a director of Rio Rancho Estates, Inc.?

A No, I am not.

Q Are you an officer of ATC Realty, Inc.?

A No, I am not.

Q Are you a director of ATC Realty, Inc.?

A No, I am not.

Q How long have you been vice-president of administration?

A Since February 1973.

Q Prior to that what was your position in the company?

A I was assistant to Dan Friedman in sales administration and also doing corporate studies, corporate systems for AMREP.

Q What is your salary, present salary?

A $53,000.

Q Are you testifying here under a grant of immunity?

A Yes, I am.

Q What are the terms under which you were granted immunity?

A That I would testify, speak to you.

Q At the time that you received the grant of immunity, were you represented by an attorney?

A Yes, I was.

Q Was the attorney paid by AMREP Corporation?

A Yes, he was.

Q You have spoken to representatives of the

United States Attorney's office on several occasions, is that correct?

A Yes, I have.

Q After you have spoken to representatives of the United States Attorney's office have you thereafter spoken with counsel for the defendants?

A At certain times, yes.

MR. FLEMING: Your Honor, I object to this.

THE COURT: Sustained.

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Q What is your educational background?

A I attended New York University.

Q Did you graduate from New York University?

A No, I did not.

Q How many years did you attend?

A Two years.

Q What did you do after you left New York University?

A I went into the Service.

Q After you left the Service what did you do?

A I went to work for a ladies chain store outfit called Good Friend Stores. I worked for them for two years both as a manager and as a regional area manager in the stores.

Q How long did you remain with them?

A About two years.

Q Can you describe what your employment has been until the time you came to AMREP Corporation?

A Yes. After the Good Friend Stores I went into business for myself in the childrens wear store, which I opened, and then I expanded into another store and I was in this business roughly seven years.

Then I closed the business and went to work for a brother-in-law of mine who was a builder and I learned the construction business and did administrative work for him and after that I opened up a real estate brokerage office of my own, which I had for about two years and during this period of time I applied for a position with AMREP.

Q You said that your brother-in-law was a builder. Where did he build?

A He built in Long Island, he built in Vermont, he built in New Jersey, several places.

Q Then you said that you -- were you a licensed real estate broker?

A Yes, I was.

Q Are you still a licensed real estate broker?

A Yes, I am.

Q When you had your real estate business, did you sell vacant land?

A No, I did not.

Q What did you sell?

A Resale houses, some houses that I built myself.

Q When did you leave your own real estate business, approximately when?

A 1969, early '69.

Q What did you do at that time?

A I went to work for AMREP Corporation.

Q How did you come to go to work for AMREP Corporation?

A While I had the real estate office I was completing a project up in Vermont, selling chalet type homes that my brother-in-law had passed away in the meantime and I was handling this for my sister. While I was traveling I thought I would apply, rather than stay in business for myself, apply to a company to go to work and one of the companies that I sent -- I contacted was AMREP Corporation.

Q The chalets that were being built in Vermont, how large a development was that?

A Very small. About two acres altogether.

Q Was the total development two acres?

A Yes.

Q How many homes were put on the two acres?

A Excuse me, I am sorry, it was, if I remember back, I think it was probably 20 acres, not two, and the chalets are on like half acre lots.

Q You sent a resume to the AMREP Corporation?

A Yes.

Q What job [illegible]e you applying for?

A Anything that they had in real estate.

Q Did you receive a response?

A Yes, I did.

Q Who did you receive a response from?

A From Mitchell Roberts.

Q Who is Mitchell Roberts?

A Vice president of personnel.

Q Did you have an interview?

A Yes, I spoke to him on several occasions.

Q Can you tell us what took place at the interviews with Mitchell Roberts?

A The interviews were basically what my background was, what my knowledge was, to try to figure out where AMREP could use me and in what capacity and it went on quite a while until Mr. Roberts told me that if I was really interested that I had a job.

At that time I was completing this in Vermont and I had a few more months to go and at that particular time I said I would take the job and I was brought in to Chester Carity. I was interviewed by Chester Carity.

Q Who actually offered you a job?

A Mitchell Roberts.

Q You were interviewed by Chester Carity after you were offered a job by Mitchell Roberts?

A Yes.

Q What job were you offered?

A At that time as I was traveling the company was interested in going into a second home development project, two or three hours out of the New York area, and it was my job to look for these locations and bring them to the principals.

Q Who were the principals?

A Basically Chester Carity at that time.

Q What was Mr. Carity's position in the company at that time?

A Executive vice president.

Q You began to work for AMREP Corporation in 196 ?

A In 1969, yes, sir.

Q Was that a fulltime or parttime situation?

A Let me clarify. In early '69 I started to work for them on a per diem basis. Being I was up in the Vermont area, I spent one or two days a week looking for these projects and would send them in to Mr. Carity and then in May of that year I came with them fulltime.

Q During the period of time before you came fulltime with the company, did you have any conversations with Howard Friedman?

A Yes, I did.

Q Where dod those conversations take place?

A At AMREP headquarters.

Q Where is that?

A 16 West 61st Street.

Q What were the conversations you had with Mr. Friedman?

A If I brought in a proposal of a second home development and reviewed it with Mr. Carity, on one or two occasions, I don't remember exactly how many, he had asked me to go over the numbers with Mr. Friedman, which I did.

Q What was Mr. Howard Friedman's position in the company at that time?

A President.

Q When you joined AMREP -- I take it you joined AMREP fulltime in May of 1969, is that correct?

A Yes, ma'am.

Q What did you do when you joined them fulltime?

A Looking for a second home development.

Q How long did that project continue?

A About four or five months.

Q Who did you report to?

A Mr. Carity.

Q Was any land acquired as a result of your efforts?

A No, it was not.

Q What happened then?

A At that particular time there was no real job for me and I didn't know whether I was going to stay with the company or not and I was offered a position to help Daniel Friedman, who was treasurer of the company at that time, help him with the paper work.

Q Did you accept that position?

A Yes, I did.

Q What did you do?

A Again, assistance. I went through statistical reports to see if they were being done correctly, commission statements, basically that's what I did at the beginning.

Q What kind of statistical reports are you talking about?

A Party statistical reports. How many party invitations were sent out, how many were returned, how many people responded, how many people showed at a party. Those kind of statistics.

Q Did they also include closing rates on parties?

A Yes, they did.

Q Did there come a time when -- after you reviewed these statistical reports, was there another assignment you were given?

A Yes, I was sent out to Albuquerque to do corporate systems study, which opened the door for me to go into different areas and to review the paper flow in the various sections in administration.

Q What did you do?

A I went out there and I sat with the different managers of the different departments and reviewed their procedures and tried to see where I can cut down any paper work that would shorten the time.

Q Did you also compile material that was being mailed out of Albuquerque at that time?

A Yes, I did that sometime in 1970, yes.

Q Tell us what you did in that regard.

A What I did is try to get a feel as to what was being used, where it went to, what was the time frame that it was sent out and I took this material back with me to New York to go over and to study to try to see how it was set up.

THE COURT: This is very vague. What type of material?

THE WITNESS: This material where the literature that was being used, the delinquency letters that were sent out, basically that was it. The contract that was used.

Q What didyou do with the material once you compiled it and brought it back to New York?

A I gave a package to Daniel Friedman and I went over it with him.

Q Did he review it in your presence?

A Yes.

Q Did you also give that material to Chester Carity?

A No, I did not.

Q What, if anything, happened as a result of the review of the material that you went over with Daniel Friedman?

A nothing basically.

Q Can you be more specific about what material you were reviewing with Mr. Friedman? Were these dunning letters you were reviewing with him?

MR. ARKIN: Objection, your Honor.

THE COURT: Wait, wait, wait. Ask him what.

You are refreshing his recollection before he indicates he has no recollection.

Q What materials did you review with Mr. Daniel Friedman?

A The contracts, the letters that were sent out to customers, the payment coupons, everything that went out in a package.

Q What kind of letters are you talking about that were sent out to customers?

A Delinquency letters.

Q Did those delinquency letters continue to be used after the review by yourself and Mr. Friedman in 1970?

A Basically, yes.

Q Did you also submit delinquency letters to Mr. Henry Hoffman for review in 1970?

A Yes, there was a request made to me to give Mr. Hoffman a package, which I did.

THE COURT: When you say a package, this is a package that you created?

THE WITNESS: Yes, sir.

Q Can you describe to the best of your recollection what was in that package?

A All the delinquency letters that we were using at that particular time.

Q When you say literature, what was the literature that you are referring to?

A I don't know if there was any literature in that package. From time to time literature was sent out from Albuquerque together with a delinquency letter to a customer, a piece of literature that was currently being used.

Q The material that you submitted to Mr. Dan Friedman for review in 1970 did that material include literature in addition to delinquency letters?

MR. FLEMING: Object. I think the witness just testified it did not.

THE COURT: Overruled. He referred to what he gave Hoffman.

THE WITNESS: I am sorry?

THE COURT: Your testimony was that you gave Mr. Hoffman a package --

THE WITNESS: Of letters.

THE COURT: Of delinquency letters and nothing else?

THE WITNESS: Nothing else.

THE COURT: Now the question is, did the package that you gave Mr. Daniel Friedman contain copies of the literature, brochures?

THE WITNESS: No, just the letters.

THE COURT: Just the letters?

THE WITNESS: Yes, I believe so.

Q You testified just a few moments ago that you also gathered literature and brought that back to New York. Did you review literature with Daniel Friedman?

MR. FLEMING: Objection.

THE COURT: Overruled.

A I really don't recall if I went over literature with him or not. I normally wouldn't go over literature with Mr. Friedman.

Q What was the literature you were just referring to?

A Normal reprints of letters -- reprints that are produced by the company.

THE COURT: Wait. Reprints of what?

THE WITNESS: Reprints, it could be a reprint of a Harper's magazine cover, which talks about real estate. It could be a reprint from a newspaper that had something in it to do with real estate. Those type things.

Q Mr. Perlmutter, let me clarify something. When you went out to Albuquerque in 1970, you gathered the delinquency letters and there were also, I believe you testified, certain pieces of literature that from time to time would be included in with a delinquency letter?

A Yes, ma'am.

Q Did you bring back with you to New York and submit to Daniel Friedman for review the literature that was sent out with the delinquency letters in addition to the delinquency letters?

A I really don't recall exactly what was in that package that I gave him.

Q What was Mr. Hoffman's position in the company in 1970?

A I believe he was senior vice president.

Q Let me show you what has been marked Government Exhibit 630 for identification. I ask you did you receive that memo?

A Yes, I did.

MS. HYNES: I offer 630 in evidence.

MR. ARKIN: No objection.

XXX (Government Exhibit 630 received in evidence.)

THE COURT: Let me see it.

(Pause.)

THE COURT: Yes.

MS. HYNES: May I just read this, your Honor?

THE COURT: Yes.

(Ms. Hynes read from Government Exhibit 630 in evidence to the jury.)

Q Who is Hank?

A Henry Hoffman.

Q Do you see Mr. Hoffman in court today?

MR. ARKIN: We acknowledge Mr. Hoffman is in court today and every day.

THE COURT: Go ahead.

Q For the record, do you see Dan Friedman in court?

THE COURT: It has been conceded. Next question.

MS. HYNES: Your Honor, I only asked about one defendant.

THE COURT: Next question.

MR. FLEMING: I concede Dan Friedman is in court.

Mr. Carity is here, too.

MR. ARKIN: Mr. Howard Friedman is here.

MR. FLEMING: I am sure Mr. Perlmutter can identify them.

Q I show you Government Exhibit 1066-A for identification. Do you recognize that?

A Most of them, yes.

Q What are they?

A These are delinquency notices sent to customers.

MS. HYNES: We offer 1066-A.

MR. ARKIN: I take it the o-fer is not made with the paper clips?

MS. HYNES: No, it is not.

(Pause.)

MR. ARKIN: A few questions.

(Continued on next page.)

VOIR DIRE EXAMINATION

BY MR. ARKIN:

Q Mr. Perlmutter, you don't know whether all these were used or not, do you?

A No, I do not.

Q Are you able to identify the handwriting on -- let me show it to you, it is not fair. I will walk it up to you.

Let's take what seems to be stamped at 5525 of Government's Exhibit 1066-A.

Can you identify the handwriting on that?

A No, I cannot.

Q What about the handwriting at 5511 of the same exhibit, the lower right-hand corner?

A No, I can't.

Q 5512?

A No, I cannot.

Q 5513?

A No, I cannot.

Q 5514?

A No, I cannot.

MR. ARKIN: Your Honor, we object on the grounds that, one, he cannot say which of these were used or not and, second, there is handwriting on a number of them.

Also, if your Honor please, may I add to the objection, which is that many of those pages have dates on them which postdate Exhibit 630, and so could not have been within the claimed package given to Mr. Hoffman or Mr. Friedman.

THE COURT: Let me see it.

(Handing to the court.)

(Pause.)

THE COURT: Since these are being offered, I gather, pursuant to Exhibit 630, doesn't the witness have to indicate that these were what he gave?

MS. HYNES: No, your Honor.

THE COURT: Then what are you offering them for?

MS. HYNES: I am offering these -- let me ask the witness some questions.

So the record is clear, I am not representing that this is the packet of material that Mr. Perlmutter --

THE COURT: All right, go ahead.

DIRECT EXAMINATION (Continued)

BY MS. HYNES:

Q Mr. Perlmutter, when you went to Albuquerque and you were reviewing the corporate systems out there and you, I take it, were reviewing delinquency notices, as you referred to them --

A Yes, ma'am.

Q Were these delinquency notices sent out in a series? Were there a series of delinquency notices sent out?

A Yes. There was a second notice and a final notice.

Q And were these delinquency notices kept in a particular place?

A They were kept in shelves.

MR. ARKIN: I don't understand the question. I object.

THE COURT: You just had the witness refer to when he went out to get these delinquency notices.

That, again, takes you back to 1969, 1970.

Q Mr. Perlmutter, these delinquency --

THE COURT: You have documents there from 1971 and 1972.

MS. HYNES: I agree. I agree.

Q Mr. Perlmutter, these delinquency notices cover a number of years, is that correct?

A Yes, they do.

Q And can you look at them and tell me what years they cover?

THE COURT: Wait. They are not in evidence yet.

MR. ARKIN: They are not in evidence.

They don't speak for themselves. They are not in evidence.

THE COURT: They are not in evidence.

MS. HYNES: Withdrawn.

THECOURT: Twice now you have tied these up to either his visit to Rio Rancho to go over the delinquency notices, which was in, I gather, 1969 or 1970, or the inference is you are tying them up to Exhibit 630.

You now have said no, you don't mean 630.

MS. HYNES: Let me address myself to the present time.

Q Mr. Perlmutter, is there a group of delinquency notices that are kept in the Albuquerque office that have been used over the years?

A Yes.

Q Looking at Government Exhibit 1066-A, are those some of the delinquency notices that have been used over the years, to the best of your knowledge?

MR. ARKIN: Objection, your Honor. It calls for --

THE COURT: Wait a second. Not this man. He can testify.

MR. ARKIN: The particular documents.

THE COURT: That's right.

MR. ARKIN: The particular documents.

THE COURT: That's right.

He is being asked after looking at these documents, can he testify that these are the documents regularly used by the corporation in conjunction with delinquency notices.

MR. ARKIN: I understand.

THE COURT: He is competent to answer that question.

MR. ARKIN: Yes, your Honor.

A There are some of these that were before my time. I don't know. I can only know since I have been with the company.

THE COURT: All right. Indicate those which you know were forms that were used by the company.

While you are doing it, we will have a recess.

You put a paper clip or something on them so you can indicate as ones you are familiar with as having been used by the company.

(Recess.)

(Continued on next page.)

(In open court - jury present)

THE COURT: All right.

Have you gone through the list?

THE WITNESS: Yes, I have.

CONTINUED DIRECT EXAMINATION

BY MS. HYNES:

Q Mr. Perlmutter, you clipped the pages that you can identify as notices that were, in fact, used, is that correct?

A Yes, ma'am.

Q And the pages that you have not clipped of Government Exhibit 1066-A are numbered 5519.

A Right.

MR. ARKIN: Please keep your voice up, Ms. Hynes. I can't hear you.

MS. HYNES: Yes. I'm sorry.

MR. ARKIN: Thank you. Thank you very much.

Q 5519, 5521.

With respect to 5521, do you know whether or not that particular delinquency notice was used?

A Certain paragraphs in it may have been used in letters, but this particular one I don't know.

Q Okay.

Can you identify which paragraphs you know were used?

You can mark it with a pencil.

A Word for word, it is very difficult for me to identify, really, any of them.

There are so many different changes that have occurred in the different paragraphs that parts of it may be there and parts may not.

I just -- the piece by itself I couldn't identify.

Q In substance, was this delinquency notice used, do you know?

A In substance, yes, this type.

Q And with respect to the page that is numbered 5525, in substance, was that delinquency notice used?

A In substance, yes.

Q And that goes over to page 5526.

A Yes. Yes, ma'am.

Q The delinquency notice that appeared on 5527.

A That I never recall. It could have been used. I don't know.

Q And 5531.

A Well, the top part I recognize.

The bottom with the writing in here I don't recognize.

MS. HYNES: Your Honor, the government will offer Exhibit 1066-A.

We will not offer pages 5519, which the witness does not recognize, and 5527 and 5531, which the witness does not recognize.

With respect to pages 5521, 5525 and 5526 which the witness recognizes in substance these were the delinquency notices, we would include this in our offer.

MR. ARKIN: We object, your Honor.

THE COURT: I will let in the ones he knows were used.

I will not let in the ones he thinks were used in substance.

(Government Exhibit 1066-A received in evidence)

THE COURT: Take out the ones that are not going in, Ms. Hynes.

MS. HYNES: I will do that, your Honor.

Q Did there come a time, Mr. Perlmutter, when you gave delinquency letters to Chester Carity for review?

A Individually, not as a group. Individually, yes.

Q When did you give delinquency letters to Chester

Carity for review?

A Sometime in 1972.

Q And did that continue from 1972 thereafter?

A On and off on occasion.

Q Who composed the delinquency letters, if you know?

A I don't know.

Q Apart from delinquency letters, were there other form letters that were used to respond to inquiries from customers?

A Were there form letters, did you ask?

Q Were there form letters that were used?

A No. There was just certain paragraphs that were used in the body of a delinquency letter to a customer.

If a customer sent in a letter on a particular subject, there were certain paragraphs which were applicable to that subject that were used that were standard.

Q Mr. Perlmutter, I am not talking about delinquency letters any more.

Will you explain to the Judge and the jury what you mean when you talk about these paragraphs that are used in letters?

What is that?

A If a customer would write in asking about, "What do you have currently at Rio Rancho? What development is there? What industry do you have that," and so forth.

There would be a paragraph that was updated that would say, "At Rio Rancho we now have X amount of stores and so forth," that type of letter.

Q What about if there is a situation that a customer wrote to Rio Rancho and inquired about resale, was there a set paragraph on that?

A Yes, there was.

Q What was the procedure with respect to how these paragraphs were utilized?

A Depending on what the customer had requested, the account service girl or the customer service girl, whatever you call her, would compose a letter back to the customer, and if the customer had asked about resale or about development, she would select those paragraphs and insert them as the answer.

Q Where did these paragraphs come from?

A Albuquerque.

Q Were they submitted to New York for prior approval?

A I would say --

MR. FLEMING: No.

I object to that, your Honor. "I would say."

THE COURT: I will let it stand.

Let's see what he is going to say.

The question is, were these sent to New York for prior approval?

THE WITNESS: Well, I can -- I know about it sometime in 1972, when we started to review them in New York the paragraphs.

Q In 1972 you began to review letters in New York?

A Yes, ma'am.

Q At that time you know that the letters were reviewed in New York?

A The latter part of '72, yes.

Q The paragraphs that were used prior to 1972, do you have any personal knowledge of whether those were reviewed in New York?

A No, I do not.

MS. HYNES: You don't know one way or the other.

Q Directing your attention to the period of 1972, were changes made in delinquency notices at that time?

A Yes, updating delinquency notices, yes.

Q They were updated?

A And new ones were prepared.

Q Were changes made in these form paragraphs if you know?

A I really don't recall.

Q The new delinquency notices that were added, who composed those if you know?

A Sherman Lurie.

Q Who was Sherman Lurie?

A Advertising director of AMREP Corporation.

Q When did Mr. Lurie become advertising director of AMREP, if you know?

A Sometime in 1972. Exactly when I don't recall.

Q Did there come a time when account representatives were assigned to various accounts?

A Yes, there was.

Q Approximately when was that?

A Late 1972.

Q What were the responsibilities of the account representatives?

A Their responsibility was to handle a group of homesite owners. The purpose of this was so that a customer who had any type of problem, they should have somebody to talk to. hhey just weren't talking to a corporation, they were talking to an individual and these girls would speak to these customers or answer their letters, if they had any problems.

Q Were there any instructions given to account representatives as to what they could say to a customer either over the phone or in a letter?

A Basically the contractual obligations were.

Q Was there any use made of these form paragraphs?

A Yes.

Q What use was made of them by the account representatives?

A If a customer had written in a letter about one of these subjects, then the account rep would compose a letter and insert the paragraph in answer to the letter.

Q Would an account representative receive calls from time to time from customers also?

A They would.

Q Was that part of their responsibility to respond over the phone to customers?

A Yes, ma'am.

Q Did they receive instructions about what they could say over the phone to a customer?

A Yes, ma'am.

Q What were those instructions?

A Nothing more than what our literature said or what the paragraphs read or what our contractual obligations are.

Q When yousay the paragraphs, you are referring to the form paragraphs?

A Yes, ma'am.

Q Are you familiar with the term "microfiche"?

A Yes, I am.

Q What is a microfiche?

A A microfiche is a print from a microfilm. If we want to get a copy of what's on microfilm, a certain process which produces this microfiche.

Q Did there come a time when customer files were put on microfiche?

A Yes, ma'am.

Q Approximately when was that?

A Sometime in 1970 or '71, somewhere around there.

Q What was put on the microfiche for a customer file?

A Everything in the customer's file.

Q If the corporation sent a letter to a customer, was it included in the microfiche?

A Yes, it was.

Q If a customer sent a letter to the corporation, was that also included in the microfiche?

A Yes, ma'am.

Q Once a piece of correspondence, for example a letter from a customer to the corporation, was put on the microfiche, was that letter then destroyed?

A No, we kept the hard copy, I don't remember the exact amount of time, but I think the legal department said we had to keep it a year because otherwise -- but microfilm was the same as a hard copy. We kept it for a period of time.

Q And then --

THE COURT: Wait, when you say hard copy, you mean the original letter?

THE WITNESS: The original, yes, sir.

Q The contracts for purchases of land at Rio Rancho Estates are installment contracts, is that correct?

A Yes, ma'am.

Q What is the term of years of the installment contracts?

MR. ARKIN: May we have a date, if your Honor please?

THE COURT: When?

MR. ARKIN: Yes, when any particular contract or any particular contract for any particular time.

Q If a period of a contract changed from time to time, will you tell us that also, Mr. Perlmutter.

A Basically the term of the contract was for 93 months. It was a period of time, I don't remember if it was in 1973 or so, that it could be extended from 93 up to 120 months.

Q Where were customer payments mailed pursuant to the installment contracts?

A To the Chemical Bank in New York.

Q Were customers provided with envelopes to make these payments?

A Not currently, but they were in the past, yes.

Q When you say not currently, what period of time are you talking about?

A I would say up to about a year and a half ago.

Q What was the practice beginning a year and a half ago?

A Rather than sending a customer 12 payment coupons to mail in each month when the payment was due, we send them a prepayment notice which arrives about a week before their payment is due just to notify them that a payment is due and then they would mail it in.

Q Where would the payment be mailed to?

A Chemical Bank.

Q Would an envelope be provided?

A Yes, ma'am. That is the original payment we are talking about. If the person is current and sends in their payments, it goes to the Chemical Bank.

Q That is right. Can you describe the procedure with respect to mailing out dinner invitations for dinners at Rio Rancho?

A Dinner invitations are mailed from a computer house to the customer based on a bank of names by zip code.

The response comes back to the local office. The local office then contacts the individual to attend the dinner reception.

From the time that you have been with AMREP since 1969, what computer houses have been used in mailing dinner invitations?

A When I first came with the company we were using Rubin, Donnelly.

Q Where was Rubin, Donnelly located?

A Somewhere in Manhattan, Yonkers, I think.

In 1972, I believe, somewhere around there, we switched to Metromail.

Q Where is Metromail located?

A Also somewhere in the boroughs here.

Q Where?

A Somewhere in Manhattan or the New York area .

Q Were these computer houses, Rubin,Donnelly and Metromail provided with criteria for people who would receive dinner invitations?

A Yes, ma'am.

Q What was the criteria and if that changed over the years tell us?

A The criteria was basically income and it changed with the inflationary period.

Q When you joined the company what was the criteria for mailing a dinner invitation based on income?

A Maybe somewhere, $6,000 up to $10,000 or $9,000, somewhere in the area. I don't remember exactly.

THE COURT: How would this be done? How would this be done? Would you tell Rubin, Donnelly to send dinner invitations to people who earned between six and $9,000, is that what you did?

THE WITNESS: Yes.

THE COURT: It was their responsibility to come up with a list?

THE WITNESS: People come -- they come up with a list based on where the person lives.

THE COURT: Rubin, Donnelly did this?

THE WITNESS: That is on the computer, yes.

THE COURT: Who put it on the computer?

THE WITNESS: Rubin, Donnelly.

THE COURT: So they were the ones who prepared, it was their decision to whom a notice was sent?

THE WITNESS: Yes, sir.

THE COURT: All you did was say we want people invited to this dinner who earn between six and $9,000?

THE WITNESS: Who earn this particular amount.

Q Did you give geographical locations to Rubin, Donnelly?

A No, not that I recall.

Q If a dinner was going to be held in the Bronx --

A Oh, yes. If a certain restaurant was going to be used let's say in the Bronx, they would be told that that is the location and an area surrounding it to invite the people so they don't have to travel too far.

Q I think you mentioned a few moments ago something about zip codes. Were zip codes also used to key in to geographical areas?

A So that you can locate for that particular restaurant, yes.

Q Did the income level change from the five to $9,000 figure that you gave us?

A Oh, yes, it kept going up.

Q What was the last income range for mailings that you recall for Rio Rancho?

A Maybe from $8,000, $8,500 up.

Q To what?

A To 17, 16, 18, I don't recall exactly. Maybe even higher, I cannot recall.

Q Who determined the criteria, this income criteria at AMREP?

A Chester Carity basically, with the direct mail department.

Q Who was in charge of the direct mail department?

A The last one was Barbara Mackin and prior to her I don't recall her name.

Q Did Rubin, Donnelly mail dinner invitations to people outside of the New York area?

A Yes, they did. They mailed nationally.

Q Nationally?

A Yes.

Q You said that the dinner invitations, the response would be mailed back to the broker.

A To the local office, yes.

Q So if it was a party that was going to be held in New York, it would come back to ATC Realty, which is the New York broker?

A That is one of the New York brokers, yes.

Q If it was a party that was in Chicago, it would be mailed back to the Chicago broker, the response?

A Yes, ma'am.

Q In how many states has Rio Rancho land been sold?

A I believe thirty-seven.

Q Has Rio Rancho land ever been sold overseas?

A Yes, it has.

Q Where overseas has it been sold?

A In Europe and the Far East.

Q Is it sold to foreign nationals?

A Yes.

Q Let me direct your attention again, Mr. Perlmutter, back to the time when you first started helping out Dan Friedman when you first joined the company. This was about 1970, I take it?

A Yes.

Q Did you also have an assignment that related to a procedure manual?

A That was a little later on. That was early 1971.

Q What was that assignment?

A It was to prepare a procedure manual, administrative manual for the offices to use covering many, many areas in office procedures.

Q Did you gather up material for this manual?

A Yes, I did. I am sorry?

Q Withdrawn.

Was there material in existence?

A Some of it. It was very sketchy.

Q What do you recall being in existence at the time that you took on this assignment?

A How to complete a contract, how to sit people at a party, certain type letters, boost letters and burn letters.

Q What is a boost letter?

A Based on the return from the dinner party invitation mailing, the local manager feels that there won't be enough in attendance what he does is go to a file of people who were invited previously and for some reason or other couldn't make it on that particular night and they contact them to attend. That is a boost file.

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Q What is a burn letter?

A A burn file is just the opposite. There are sometimes when in a geographic area a particular restaurant too many people would attend and we had certain criteria of the number of people we wanted at a party. We didn't want too many people at a party so there would be a regret letter, maybe you could make it next time.

Q When you compiled this material for the procedure manual, what did you do with it?

A In what respect are you talking about?

Q Did you submit it to Daniel Friedman for review?

A I reviewed it with Daniel Friedman, yes.

Q Was that material updated from time to time?

A Yes, it was.

Q When you submitted it to Daniel Friedman for review, did you also submit it to Chester Carity for review?

A No, I did not.

Q Did you submit it to Chester Carity at all?

A No, I did not.

Q When the material was -- I take it there was a procedure manual that was put together, then, is that correct?

A Yes, there was.

Q Who received that procedure manual?

A Daniel Friedman got it, Chester Carity had a copy which was given to him, I think the legal department received one. At the time Mr. Friend was in charge of the legal department, they received one. Each office received one and every area director received one.

Q Prior to your assignment of gathering this material, had there been in existence a procedure manual?

A There was something very, very small, very little put together which I don't consider a procedure manual. It just had certain things in it. It wasn't a complete work of what you had to do.

Q You testified that the manual was updated from time to time, is that correct?

A Yes, ma'am.

THECOURT: After he did this in '71?

MS. HYNES: Yes, your Honor.

Q After you did it in '71 I am referring to.

A Yes, it was continuously updated.

Q When it was updated did you distribute the updated material to Mr. Daniel Friedman?

A Yes, I did.

Q Did he review it?

A He reviewed it prior to it being distributed.

Q Am I correct, then, that when a piece would be updated or when the manual would be updated Mr. Daniel Friedman would review that updated material?

A Yes, ma'am.

Q Would the updated material be distributed to Mr. Carity?

A For insertion in his book, yes.

Q What about Mr. Friend in the legal department?

A For insertion in their book, yes.

Q And the local offices?

A Same way.

THE COURT: Can we get a more detailed description of what was in this procedure manual?

MS. HYNES: I am going to try to do that right now, your Honor.

THE COURT: Do you have a copy of that? Didn't we have one here, some witness had one a couple of weeks ago.

MS. HYNES: Your Honor, I think Mr. Zaknich produced a manual that he used.

Q Mr. Perlmutter, I am showing you Government Exhibit 203, 749 and 750 and ask you if you can identify these three exhibits.

A These are all parts of the procedure manual.

MS. HYNES: Your Honor, we offer 749 and 750 and Government Exhibit 203,we offer the entire manual.

VOIR DIRE EXAMINATION

BY MR. ARKIN:

Q Mr. Perlmutter, this is not the complete procedure manual, is it?

A No, it is not.

THE COURT: What have you got in your hand?

MR. ARKIN: Excuse, referring to Exhibit 203.

THE COURT: Yes.

A No, it is not.

Q In fact, it is not even a major portion of it, is it?

A Just a part of it.

Q Just a part which was picked out by Ms. Hynes and you?

A No.

MS. HYNES: I object to this. This was the portion produced by the company.

THE COURT: Wait, wait. Objection sustained. That's all you have to say, Ms. Hynes, let's not have a speech.

MR. ARKIN: We object to 203.

THE COURT: 203 is in, isn't it, on November 10th?

MR. ARKIN: Isn't there another one which was offered? Your Honor, I believe another one was offered. If it is in, I am mistaken and I withdraw my objection because it would be futile.

MR. FLEMING: A manual did come in, if I recall.

MR. ARKIN: Another manual.

THE COURT: Just a second. No.

MR. ARKIN: This is a different manual, your Honor.

THE COURT: Go ahead.

MR. ARKIN: Your Honor, we object to 203 on the ground it is not what it purports to be. It is not the manual. I hand it up to the clerk for you to look at.

THE COURT: The witness says it is a portion of the manual.

MR. ARKIN: Yes, your Honor.

THE COURT: All right, that's what it is being offered for as a portion of the manual.

MR. ARKIN: We object on the grounds we believe if the manual is offered, it should be offered intact.

THE COURT: Overruled.

Can you tell what period that manual 203 covers or that portion of the manual, the time period, and whether you are the one that put that together?

THE WITNESS: There are all different dates in here, your Honor. Revised on different dates. I would have to go through each page separately.

THE COURT: You say you are the person who revised the manual?

THE WITNESS: Yes.

THE COURT: Is that material you revised?

THE WITNESS: Yes, it is. This is a part of the manual, yes.

THE COURT: What part of the manual is it?

Is it a chapter of the manual or just isolated pages from the manual?

THE WITNESS: It is pages from the manual.

THE COURT: Without regard to any particular topic?

THE WITNESS: Yes, it looks like certain sections of the manual are in here.

THE COURT: Did you set this manual up by sections?

THE WITNESS: Yes, I did.

THE COURT: This is only some pages of some sections?

THE WITNESS: I really don't know, your Honor, because each section has a folder in it with a heading for that particular section and that entire section is in that folder. This doesn't have a folder in between so I don't know.

THE COURT: These are just isolated pages at random from that manual as far as you can tell?

THE WITNESS: They are isolated parts. They may be from particular sections, but I don't know if it is all of the section or not.

THE COURT: I am going to sustain the objection to 203.

DIRECT EXAMINATION (Continued)

BY MS. HYNES:

Q Mr. Perlmutter, Government Exhibits 749 and 50, is that also part of the procedures manual?

A Yes, it is.

Q Are those -- 749, that group of documents, is that --

A The entire thing, I don't know.

Q Mr. Perlmutter, do you know what part of the procedure manual is missin?q

THE COURT: From what? From what he has in front of him in those three exhibits?

A I have no way of knowing.

Q Is there a complete procedure manual?

A Sure there are. All manuals at AMREP are complete that are used.

MS. HYNES: Your Honor, can we have a side bar, please?

THE COURT: Yes.

(At the side bar.)

THE COURT: Yes.

MS. HYNES: This manual, 203, which is the looseleaf binder was produced in the grand jury as the procedure manual. I questioned then whether that was the entire manual. I then got in the two other exhibits which I have shown this witness.

I am more than happy to have the entire procedure manual.

THE COURT: Has anybody the entire one?

MR. ARKIN: Ms. Dacey is our production expert.

MS. HYNES: I do not want the jury to think I was withholding that.

THE COURT: Will you stop, Ms. Hynes.

MS. DACEY: I believe you were produced the entire administrative manual, that big black book during the grand jury proceedings of which I believe this is excerpts.

MS. HYNES: This was produced in the grand jury as the procedure manual. If you are referring to a different manual, I don't know about it.

MS. DACEY: My understanding is this may be part of a larger administrative manual of which you also, I mean the whole manual was produced to you in the grand jury process.

THE COURT: In the exhibits listed for production, has that manual been listed?

MS. DACEY: No, I don't believe so.

THE COURT: You say you have turned it over to them?

MS. DACEY: If we are speaking about the same thing, yes. It was turned over --

THE COURT: Let's not waste the time of the jury. After we are finished with the jury for the day we will come back to this.

(In open court.)

BY MS. HYNES:

Q Mr. Perlmutter, was there a practice the morning after the sales dinner to have a manager make what was called a confirmation call?

A Yes, ma'am.

Q Was there a script for the confirmation call?

A Yes, there was.

MS. HYNES: May I have this marked 203-A.

XXX (Government Exhibit 203-A marked for identification.)

Q Let me show you Government Exhibit 203-A and ask if you recognize that.

A Yes, I do.

Q What is it?

A This is the sectionof the book that talks about the confirmation call and this is the basic outline of the confirmation call.

Q Is that the script for the confirmation call?

A Yes, ma'am.

MS. HYNES: The government offers 203-A.

(Pause.)

VOIR DIRE EXAMINATION

BY MR. ARKIN:

Q Mr. Perlmutter, is this the particular script used today?

A I really don't know.

Q Do you know during what period of time it was utilized?

A This particular script?

Q Yes, sir.

A I think the bottom says, if there's a date on it, it would be on the bottom. Offhand I couldn't say exactly.

Q Were different scripts used from time to time?

A Yes, they kept being revised, yes.

Q Would it help you to identify or determine when it was used by looking at the bottom of page 417 of Exhibit 203-A for identification?

A Yes. This was used starting December, 1973 up until what period I don't really recall.

THE COURT: Starting with December, 1973 or ending with December?

THE WITNESS: No, this was revised in December of '73.

Q So that this script was not used from December of '73 forward, is that correct?

A No, you are wrong. When it says revised December '73, that means this was in use after December '73.

Q After December of '73?

A Yes. Now, how long a period of time it was used I don't know unless I saw the updated manual today.

MR. ARKIN: We have no objection, your Honor.

XXX (Government Exhibit 203-A received in evidence.)

MS. HYNES: Your Honor, may I read from a portion of 203-A?

THE COURT: Yes.

(Ms. Hynes read from Government Exhibit 203-A in evidence to the jury.)

(Continued on next page.)

Q Mr. Perlmutter, that was as of December of 1973, that was the script for the confirmation call, is that correct?

A Yes, ma'am. Yes, ma'am.

MS. HYNES: Your Honor, at this time I would like to offer Government Exhibit 468.

(Pause.)

MR. ARKIN: No objection.

XXX (Government Exhibit No. 468 marked for identification received in evidence.)

MS. HYNES: Your Honor, may I read from a portion of this?

THE COURT: Yes.

(Ms. Hynes read from Government Exhibit 468 in evidence to the jury.)

Q Mr. Perlmutter, what is MRC? Where are they located?

A I never heard of MRC.

Q MRC Is a broker?

A Never heard of them.

(Ms. Hynes continued to read from Government Exhibit 468 in evidence to the jury.)

Q Do you know who the Pete is that is referred to?

A Probably Pete Zaknich.

Q And who is Peter Zaknich?

A Peter Zaknich was vice president of sales.

Q And at that time what was Dan Friedman's position in the company?

A Treasurer.

Q You testified about the practice of boosting to get attendance up at dinner parties.

With respect to attendance at dinner parties, were you ever advised by Dan Friedman that you needed a certain amount of mass psychology in order to sell properly?

A I heard that term, yes.

Q My question is, have you been so advised by Dan Friedman?

A Yes.

Q Do you recall approximately when you were advised?

A In one of our -- one of our offices, they weren't getting enough attendance based on the amount of people that had been set up to be at a reception, and in discussing the attendance, to get it up to what we would need, which was two units for each salesman, this term came out in that regard.

Q Do you recall approximately what year that was?

A 1972, probably.

Q Mr. Perlmutter, after a sale was made and a confirmation call was made, was there a letter sent to the purchaser?

A From the local office are you referring to?

Q Let me show you what has been marked as Government Exhibit 750 for identification, and ask you if you recognize that (handing).

A This is basically the letter. I don't know whether it has been updated or not in between, but this is, in essence, what was sent, yes.

MS. HYNES: We offer 750.

THE COURT: 740?

MR. ARKIN: 750, your Honor.

THECOURT: Wasn't that one that was being held up?

MS. HYNES: It is a single sheet of paper. It is a letter.

MR. FLEMING: I think they have a duplication.

I recall 750 being part of this manual.

THE COURT: The procedures manual.

Is this part of 750 in the procedures manual which you offered before?

MS. HYNES: Your Honor, I am taking it step by step. This is the 750 that was offered.

THE COURT: The question I am putting to you, is 750 the exact 750 you offered before and we discussed at the side bar?

MS. HYNES: Yes.

THE COURT: Any objection to it?

MR. FLEMING: The same objection.

MR. ARKIN: Yes. I have another objection, too. He says this is in substance. He can't identify the particular document.

THE COURT: Let me see it.

(Handing to court.)

THE COURT: Can you tell us when this was used?

THE WITNESS: What period of time? No, your Honor.

THE COURT: I will sustain the objection.

Q Mr. Perlmutter, you said that you joined the company in 1969, is that correct?

A Yes, ma'am.

Q And sometime in 1971 you came to have some responsibilities with respect to a procedures manual, is that correct?

A Yes, ma'am.

Q And from time to time after 1971, you updated that procedures manual?

A Yes, ma'am.

Q And was part of the procedure manual -- did part of the procedure manual contain a letter, a form letter, that was to be mailed to a purchaser who bought property at a sales dinner?

A Yes, it did.

Q I show you Government Exhibit 750, and ask you if that document was used after 1971, after you started to have responsibilities with respect to the procedure manual? Was that letter included in the procedure maual after 1971?

MR. ARKIN: Objection, your Honor. That has been asked and answered.

THE COURT: Overruled.

A Yes, it was included in the procedure manual. I just don't know what dates, though.

THE COURT: Would that be from 1971 to 1976?

THE WITNESS: Yes, sir. Any time in between there.

Q Do you have any recollection as you look at that document whether you revised that document?

A I wouldn't recall specifically.

MS. HYNES: The government again reoffers 750.

MR. ARKIN: We have the same objection, your Honor.

THE COURT: Same ruling.

We will adjourn until tomorrow morning at 10:00.

(The jury and the witness left the courtroom.)

MS. HYNES: Your Honor, may I make an application?

THE COURT: Yes.

MS. HYNES: Your Honor, with respect to this problem with the procedure manual, I want to explore that with counsel, but what I don't want to be in a situation is having a procedure manual which is produced which is the procedure manual that has been used for the last year or after the indictment was brought down and not the procedure manual that was used prior to the grand jury investigation.

Quite frankly, I told you in a prior application that Mr. Perlmutter, I wanted to question him as a hostile witness, and in every conversation which I have had with Mr. Perlmutter to date he has used that exact letter as the letter, never told me there was any different letter, but the letter that has been used by the company as the follow-up letter going out to the customer.

I am happy to get a procedures manual, but I don't need a revised procedure maual after the grand jury investigation started.

I think if we find out there is another procedure manual, that's the situation that we are going to get into.

This was a procedure manual that was produced very early in the investigation as it was. If there are pieces missing, it could be that pieces were taken out of it, I don't know.

The point is --

(Continued on next page.)

THE COURT: Wait, wait. 203 is not as complate as you are indicating.

He has indicated that these are just pieces, and I gather a small part, of what was the procedures manual.

What you are stating now is as though it were the major portion.

MS. HYNES: No. I am simply referring to a specific part.

It may be that this is part of the procedures manual. It may be that the other part of the procedure manual that is missing is how to buy office furniture, which I don't care about. I mean, that could compose 80 paces. It really does not make a difference to me. My offer of proof would still be on these particular documents if I had 400 more pages of the procedure manual.

THE COURT: Yes. But I think in view of what the witness has said and what Ms. Dacey has said that you were furnished with such a procedures manual in a big black book she indicated at the side bar --

MS. HYNES: Ms. Dacey was not able to say whether it was a procedures manual or an administrative manual.

THE COURT: Why don't you find out between now and tomorrow morning. That is number one.

Number two, I would -- where is the witness? Is he here?

Bring him in.

(Lawrence Perlmutter entered the courtroom)

THE COURT: Do you have up in your office a procedures manual from 1971, 1972, 1973?

THE WITNESS: We have a current -- we have a current --

THE COURT: That is a current one in 1976.

This lawsuit involves procedures that went on back in 1971, 1972, 1973.

THE WITNESS: No, sir, we don't. We just maintain the current one. As we revise it, we change the pages.

THE COURT: What is this 203 that was shown to you which you have identified as portions of the procedures manual?

THE WITNESS: Yes. It is part of the whole manual.

THE COURT: Of the existing manual?

THE WITNESS: Yes, sir.

THE COURT: And you cannot tell us whether that was used back in 1971 or two or three?

THE WITNESS: I did say it was used. I don't know the exact dates. It was used. It was part of the procedure manual.

But when we stopped using it or revised it I don't know.

THE COURT: What about 749?

THE WITNESS: What was that?

THE COURT: Show him 749.

(Handing to the witness)

THE WITNESS: Yes. All these are part of the procedure manual.

THE COURT: Not now, back in 1970, 1971, 1972 and 1973.

THE WITNESS: Okay.

The top -- the top page says, "Revised November 1972."

So November 1972 this top page was in use.

THE COURT: All right.

THE WITNESS: This says revised December 1973. It was in use in December 1973.

February 1973, it was in use in February 1973.

Revised October 1971, that was in use in October 1971.

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This one has no date on it.

And the confirmation call here, the front part does not have a date.

It was used. I don't know what date it was used.

THE COURT: When you say you don't know what date it was used, what do you mean?

You have no idea --

THE WITNESS: It was used any time from the time the procedure manual was put together, which was in 1971; up until 1975, anytime in that period it could have been if it does not have a date on it. I don't know.

It might currently, you know -- it might have been used all the way through. I just don't know without looking at a, you know, complete manual to see what--

THE COURT: Overnight, the first thing to do is to find out whether the government was furnished with this procedures manual completely as Ms. Dacey indicated, and then I will rule on the rest of it tomorrow.

All right.

MR. ARKIN: Good night, your Honor.

(Adjourned to Wednesday, December 1, 1976, at 10:00 o'clock a.m.)

nd take
nd day

WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
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1066-A		3136
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468		3165
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CR		3100

UNITED STATES OF AMERICA

v. 76 Cr. 644

AMREP CORPORATION, et al

December 1, 1976
10:00 A.M.

(Trial resumed - in the robing room)

THE COURT: We have the first problem regarding the jury. A letter from Dr. Sanford A. Kaplan, 821 Bronx River Road, Yonkers, New York.

"To whom it may concern: re Sam Weinhouse.

"Mr. Weinhouse, who is over seventy-three years of age and has cataracts and hiatus hernia has been having increased abdominal symptons and difficulty with his vision.

"On this basis it is my opinion that continued jury duty is an undue stress and the patient has medical reason to be excused."

I forget the background of his selection. Does anybody recall it?

MS. HYNES: Your Honor, I think that Mr. Weinhouse was the gentleman who came up at the very beginning when there were objections and thought that -- erroneously came up to the bench and said he was willing to serve and you sent him back down and he ended up being on the panel.

MR. RUBIN: That medical excuse was never given, your Honor.

THE COURT: He never gave it to me and I knew his age. I would have forthwith excused him because we had plenty of jurors out there.

MS. HYNES: He does have a squint or something, your Honor. He does have a problem.

THE COURT: I think we ought to ask him whether he has requested this.

The letter states: "On this basis it is my opinion that continued jury duty is an undue stress and the patient has medical reason to be excused."

Does not answer the question to me as to whether Mr. Weinhouse was asked to be excused or his doctor is advising that he not sit. I think we ought to find out from him first what the story is.

MR. ARKIN: I agree.

THE COURT: However, I have to admit against this sort of a letter from a doctor, I don't know whether we are going to have much choice in forcing him to sit.

Did Weinhouse ever raise the question of his age?

MR. SPRIZZO: No.

MR. RUBINO: I don't recall his raising any question, your Honor.

MR. ARKIN: He did come to the bench and precisely what he said during the voir dire I don't recall and I do remember him saying finally after Judge Metzner questioned him that he would be able to serve and he had misunderstood the question that was asked of the panel.

MR. RUBINO: That is my recollection.

MR. ARKIN: I don't remember whether he mentioned his physical condition. Certainly his age was apparent.

THE COURT: I didn't know he was seventy-three. He looked as old as I am.

MR. RUBINO: Before or after this trial, your Honor?

THE COURT: Bring Mr. Weinhouse in.

Are there any questions that any of you want me to ask him?

MR. HOFFINGER: What is his condition?

THE COURT: He has cataracts and hiatus hernia.

Cataracts are not necessarily an impediment to sitting. Hiatus hernia can be. It can cause great pain and suffering.

MR. ARISOHN: Did he hand the letter to your Honor or to your Honor's clerk?

THE COURT: The court clerk gave it to me. It looks like he wants to get out.

MR. ARKIN: I think, your Honor, we are boring him.

MR. RUBINO: The prosecution is.

THE COURT: Let's find out. Let's talk to him and then we will let him go and then we will discuss it some more but let's get on the record what the story is.

How much longer are you going to have of your case?

MS. HYNES: Your Honor, we are on schedule. I haven't sat down -- I always said with cross examination it will be six to eight weeks. We are in our fourth week now. We will be completed by the end of the eighth week if not sooner.

(Juror No. 5 enters the robing room)

THE COURT: Mr. Weinhouse, I have this letter from your doctor and, frankly, we are a little -- I am, at least -- a little surprised by it. You didn't indicate to us when we selected you that you had any problems.

JUROR NO. 5: Your Honor, I didn't really know that it would be that long on the jury. I figured two weeks or three weeks.

THE COURT: I said four months.

JUROR NO. 5: You did. The jurors told me after, but I didn't hear from the beginning.

THE COURT: You didn't hear me say it?

JUROR NO. 5: No, I didn't. The girls told me after when I told them that I would like to be off, he says didn't the Judge tell you that you are going to be about four or five months, but I didn't hear it. Really I didn't.

THE COURT: We said three to four months. Go back and tell them three to four months.

JUROR NO. 5: It is okay regardless.

THE COURT: It is that old story operating under the wrong law.

What's wrong with you?

JUROR NO. 5: I have a little trouble. Also I got piles and I can't sit too long in one place. You see if you notice I always twist and turn around, you know.

THE COURT: You have caused us a great deal of problem. You prevented us from having somebody who can sit.

JUROR NO. 5: If you can do it, I would appreciate it, your Honor, that is all. I love to be on it, don't get me wrong. I enjoy it.

THE COURT: Do you go to the doctor for regular treatment?

JUROR NO. 5: Yes.

THE COURT: How often?

JUROR NO. 5: Once a month.

THE COURT: What does he do for you?

JUROR NO. 5: Well, he gives me certain things.

THE COURT: This is for the hiatus hernia. Your eyes you don't go to a doctor?

JUROR NO. 5: That I was operated on for already. I had glucoma.

THE COURT: We all get that when we get old.

JUROR NO. 5: I have still got, what do you call it, not glaucoma --

THE COURT: Cataracts.

JUROR NO. 5: Cataracts. They can't operate yet.

THE COURT: They are not ripe yet.

JUROR NO. 5: Yes.

THE COURT: What discomfort do you suffer?

JUROR NO. 5: Just to sit.

THE COURT: The sitting part.

JUROR NO. 5: And I turn and twist.

THE COURT: Do you think if we would get you a rubber ring you would feel more comfortable? You see, we don't like to lose a juror that everybody has agreed should sit, number one.

Number two, if we lose all of you before the case is over, we have to start all over again and we don't have time to do that.

JUROR NO. 5: I know that. If you could do it, I would appreciate it, but I don't say -- I wuld love to sit and I love to be on the jury, I tell you that much. I enjoy it.

THE COURT: How about trying it for a little longer and see how it works out.

JUROR NO. 5: How much longer?

THE COURT: You are going away for Christmas and New Year's?

JUROR NO. 5: For Christmas and New Year's, my kids are here in New York. We do go for the holidays, but it doesn't mean we are going away for the Christmas holidays.

THE COURT: We would give you a couple of days off at Christmas.

You go on outside and let me talk to the lawyers.

JUROR NO. 5: Okay, thanks very much.

THE COURT: Right.

(Juror No. 5 left the robing room.)

THE COURT: It seems to me that even if we asked him to try it, you are going to get the repeat next week. Now I open the floor to the government. Do you have any objection to my excusing Mr. Weinhouse?

MS. HYNES: No, your Honor, I do not. I am a bit concerned by Mr. Weinhouse's statements that he didn't hear. That's the second occasion that he didn't hear. He said he didn't hear that it was a three to four month case and then he came up erroneously the first time because he didn't hear that correctly so I am also a bit concerned about his hearing.

He does squirm and does seem to be uncomfortable and has a twitch in his eye that I have observed and I would have no objection to having this man removed.

MR. FLEMING: Judge, I understand what you are saying about if we give him more time, he may just ask again later on in the trial, but the difficulty I have in excusing him now is we don't know what is going to be happening to the other jurors. If he stays another week or ten days and there has been any decimation of the other jurors, the decision could be to the contrary despite some discomfort he has.

He may not come back.

THE COURT: He ended up by saying another week. I say how about giving us a little more time, you know. He says, well, another week.

MR. FLEMING: If we were a week from ending the trial, I wouldn't have any problem with excusing him, but then we would know we have a full panel.

MR. RUBINO: If he is going to repeat this request in a week or so, you will have to concern yourself over the fact that attention may be waning quite a bit as the trial goes on knowing full well he may make another application to be excused.

MR. ARKIN: I don't think the man's attention is waning any more than other jurors who sleep on occasion. I have observed that he is terribly uncomfortable and if he is squirming and the trial will go on for three or four or five and a half weeks, whatever it goes on for depending on the government's case and our case, it seems to me that having him be there that long and be uncomfortable is just not a thing we can do.

MS. HYNES: Plus his age, your Honor, 73.

MR. ARKIN: I am not happy about losing him.

THE COURT: He is a vigorous 73, Ms. Hynes. He is not a decrepit 73 on the outside. Maybe on the inside.

MR. ARKIN: I think his discomfort, which I think he was very exact in describing --

THE COURT: Mr. Lavinsky?

MR. LAVINSKY: I think we really don't have too much of an alternative. I think ultimately we would have to let him go.

MR. FLEMING: John Sprizzo mentions another problem. That is I just think there is value in keeping him at least for a while to see if he comes in again. I think he may not.

If he gets off just by writing a note, you may get some from other jurors.

THE COURT: This is a doctor's.

MR. HOFFINGER: The doctor's note is inconsistent with his statement here. The doctor tends to talk about abdominal pains.

THE COURT: This fellow just says his hemorroids.

MR. HOFFINGER: He is talking about piles.

THE COURT: Don't tell us your experience with piles.

MR. HOFFINGER: I am not saying anything about experience. All I am saying is I don't know that we want to cater at this point to his wish to get off the jury because I am worried about the inflammatory with the others.

If they know they can get off with a doctor's note, there is no telling what is liable to haApen.

MS. HYNES: Your Honor, I wuld just add one more thing and that is the fact that Mr. Weinhouse comes in and there are some, I don't know, 12 or 15 people standing around watching him and that may be an added reason why he is more reticent than his doctor's note. He did go to the doctor, he is under treatment.

THE COURT: He goes once a month. He doesn't go for his cataracts. He goes for the hiatus hernia. He has not gone to the doctor aside from his regular visits because he is presently under a seige of some sort which requires medical attention.

This is what bothers me about this letter. It looked as though the patient went to the doctor and said, I have been sitting on the jury, I would like to get off, would you write me a letter.

I made that point before we called him in and I think that is what this letter is at the present time.

I suggested to him that he ought to try sitting and see how it works out and let him bring his rubber tube with him if he wants, but I am loathe to let him go simply because of the length of the trial. We only have six alternates there.

Frankly, I knew somewhere along the line we were going to get the attrition problem, but I was going to attribute it to the swine flu.

MR. SPRIZZO: That is another problem, too, if that does come.

THE COURT: I think we ought to get the nurse up and give them all a jab now and make sure they have all had the swine flu.

MR. HOFFINGER: I am against that. My doctor says no.

MR. ARKIN: How about us, Judge?

THE COURT: Bring Mr. Weinhouse back.

MR. RUBINO: I am concerned of something about his integrity. The letter says nothing whatever about piles. Hiatus hernia is a far more serious thing. It could be critical, as a matter of fact. There is something about him that concerns me, I must say.

THE COURT: I know I am going to get another request a week from now. We all know that. We are kidding ourselves if we think this fellow is suddenly going to get a change of heart.

I may have jokingly referred to Christmas and New Year's, but I have a sneaking suspicion on there may be something involved in that.

Let's try it and see what happens.

MS. HYNES: Can you inquire about his hearing. It does concern me. Ask him --

THE COURT: He has not made any indication of that and if I inquire, I know what the answer is going to be. He wants out.

It is perfectly obvious from the wording of this letter and the way he talked that he wants out and I am not convinced that he is seriously disabled at this point to have it granted unless everybody agreed they wanted him out and there is obviously disagreement here.

You have Mr. Rubino and Mr. Hoffinger and Mr. Fleming of the defense that want him held on and Mr. Arkin and Mr. Lavinsky --

MR. RUBINO: I don't want him held on.

THE COURT: We will try for a while. Call Mr. Weinhouse back.

(Continued on next page.)

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(Juror No. 5 entered the robing room.)

THE COURT: Come on in, Mr. Weinhouse.

JUROR NO. 5: Yes.

THE COURT: I have decided, after talking it over with all assembled counsel here, that what I suggested when you were in a couple of minutes ago ought to be tried, and that is, you ought to continue as a juror and see how it works out, and if you need your rubber tube, bring it with you, if not, we can get one for you.

You know, we can't lose jurors like this. It is too important a case and we can't run the risk of tens of thousands of dollars which have been spent so far.

JUROR NO. 5: I know it, because I had a brother-in-law of mine was a juror for a long, long time and I offered to go to his court. He's in the Civil Court in the Bronx, and I knew that.

I really, if I knew before it was for length of time, I wouldn't even take it, but I would try to excuse. But I didn't know.

THE COURT: Aren't you enjoying yourself?

JUROR NO. 5: Very much. I like it, I wouldn't say no. I like everybody. I like the case. I'm not saying no.

THE COURT: I say, let's try it for a while and see how it works out. Okay?

JUROR NO. 5: All right, your Honor. Good.

THE COURT: Thank you.

JUROR NO. 5: Thanks very much.

(Mr. Weinhouse left the robing room.)

THE COURT: Are there any problems we have?

MS. HYNES: Your Honor, in trying to clear up the situation with the procedure manual, I reviewed the grand jury testimony, and the exhibit that I offered, which is 203, as a trial exhibit came into the grand jury as Grand Jury Exhibit 12. It was identified by Mr. Schreier, who appeared as the custodian for the records of the corporation, that it is a manual -- he described it as a manual which is called a procedure manual, and that's what was produced.

Then there were the 11 -- Grand Jury 11 and 11-A were also part of the procedure manual. They have been marked trial Exhibits 749 and 750.

Later on, much later on in the grand jury investigation, I learned that there was more to the procedure manual than had been produced. There was at that time a procedure manual produced, but it was revised as of July of 1974, which was after the grand jury investigation started.

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The point is that the part of the procedure manual that I am introducing is the procedure manual that was in existence as of the beginning of the grand jury investigation. It was one of the first documents that was produced. It was produced pursuant to the first subpoena issued out of the grand jury.

It is, in fact, the procedure manual. This witness has testified and will testify that it is the procedure manual.

The fact that the manual was revised after the grand jury investigation started and another manual was used, that is a very different issue. But the part that I am introducing is a part of a procedure manual in existence at least as of the date that it was produced in the grand jury, which is April of 1974.

THE COURT: It seems to me that what you have in 203 can only be introduced as of the dates that the pages speak of.

I gather that these pages in 203 -- I haven't seen it, but from what was said yesterday -- some say revised December, 1973, some say revised October, 1974.

I don't know what is on those pages, but I assume that your introduction of the manual is to then turn to portions of it to show that the defendants had notice of certain practices which you think justify a conviction in thise case.

If that is done, there will have to be an instruction to the jury that it speaks only as of the date on the page.

MS. HYNES: Yes. But there are pages that are not dated, and we will try to develop testimony as to when those pages were used.

THE COURT: You will have to get from this fellow, I suppose, who is on the stand now, who claims he wrote it or revised it, when it was adopted, unless you have some other witness who can do it.

MS. HYNES: The only other witness, unless there is a stipulation with counsel, was that at least as of the date that it was produced it was the manual that was in use as of that date for the undated pages. I mean, that is the only one that we are concerned about.

The dated pages speak for themselves.

So as of April 8, 1974, if there is an undated page, it was produced and described as the procedure manual as of that date.

MR. ARKIN: The problem is if, as your Honor suggests, Ms. Hynes' purpose in introducing the manual is to bring home to certain defendants certain practices,

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whether they be criminal or non-criminal or desirable or undesirable, I don't believe she brought the particular manual or the documents home to any individuals at this point.

THE COURT: No. But she is going to. I will always take it subject to connection.

The whole thing is coming in so far --

MR. ARKIN: Subject to connection.

THE COURT: I have asked here for the brief next week as to how you are bringing each one in.

MS. HYNES: Your Honor, if this is helpful, my first intention in offering that 203, I had designated certain pages which I would seek to offer and it would be very clear and I can make it very clear that I am only offering portions of the manual, if that is helpful to counsel.

At the time that I went to offer it, because I thought there might be an objection that I was only selecting out portions, I offered what was in that manual.

I mean, I don't know whether that is helpful to you if there is a statement that I am only offering portions of it.

THE COURT: I don't think it makes any difference.

I will let it in as of now as the manual speaking of the dates on the pages or as of the date of its presentation to the grand jury. The undated pages will have to be further identified to make them available for any earlier dates that you think is necessary.

MS. HYNES: That is the problem, your Honor. How do we do that?

If a page is undated and it was produced in the grand jury as the manual or that page was produced as part of the manual that was in use at that time and it is undated, you know, sitting there looking at that page, is not going to know the situation whether that was produced in the grand jury. He didn't produce it.

THE COURT: Inquire of him.

He is the fellow who wrote it, he says.

MS. HYNES: He didn't write it, he compiled it.

THE COURT: He compiled it. This was his job.

There are ways of asking him -- this is your problem, but there are ways of asking him and questions you can put to him to get that information.

MR. ARKIN: There is also the difficulty as to whether or not this manual, or most of it or most parts of it, were utilized at Silver Springs Shore, which really is not at issue here.

THE COURT: That is a problem of cross examination.

He has said that this was what was used for Rio Rancho. That's what he said.

MR. ARKIN: Perhaps I might have a brief voir dire on that issue.

THE COURT: Well, you can do that.

Anything else?

MS. HYNES: No, your Honor.

THE COURT: All right, let's go.

MR. LAVINSKY: Judge, I have an engagement this afternoon as a result of which I will not be in court.

I have told Howard Friedman that Mr. Arkin would cover for me and he is perfectly agreeable to that.

Normally, when Ms. Thompson is in town she covers. Either she is here or I am. She is away.

THE COURT: Mr. Arkin, you will cover for him?

MR. ARKIN: That is fine, sure.

MR. LAVINSKY: Thank you very much, your Honor.

(In open court; jury present.)

XXX LAWRENCE PERLMUTTER, resumed.

THE COURT: You may proceed.

MS. HYNES: Thank you,your Honor.

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DIRECT EXAMINATION (Continued)

BY MS. HYNES:

Q Mr. Perlmutter, I show you Government Exhibit 203-A in evidence, and ask you, does that come from the procedure manual (handing)?

A Yes, it does.

Q Is there a date at the bottom of the page for the script that was read yesterday?

A Yes. Revised December, 1973. It means it was used as of December, 1973.

Q So Government Exhibit 203-A in evidence is part of the procedure manual as of December of 1973, is that correct?

A Yes, ma'am.

Q I am going to show you Government Exhibit 749, and ask you to look at that exhibit (handing).

Are there any dates on various pages of that exhibit?

A Yes, there are.

Q On the first page it says --

A Revised November, 1972.

Q And on other pages are there different dates that appear?

A Yes, there are.

Q In revising the procedure manual, are different pages revised at different times?

A Yes, they are.

Q In other words, with Government Exhibit 749, if the front pgae says revised as of November, 1972, then there is another page that says revised as of December, 1973 and there is a page that says revised as of October, 1971 --

A Right.

Q Could the pages that were revised as of October, 1971 and November, 1972 still be in the procedure manual that was revised as of December, 1973?

A They could be, unless there were undates after that.

Q Can you tell by looking at this whether this was part of the procedure manual that was in use as of December, 1973?

MR. ARKIN: Looking at what, if you recall?

MS. HYNES: Government Exhibit 749.

A Would you please repeat that question to me again?

MS. HYNES: Would you read back the question, please.

THE COURT: 749 isn't in evidence.

You just referred to Government Exhibit 749 as Government Exhibit 749. It is Government Exhibit 749 for identification.

MS. HYNES: For identification, that's correct, your honor.

Can you read back the question.

(Record read.)

A Those pages that are marked on the bottom revised December, 1973, the answer is yes.

The page that is marked November, 1972, I don't know. It might have been, but it might have been updated after that. I don't know.

XXX (Government Exhibit No. 749-A was marked for identification.)

(Continued on next page.)

Q Mr. Perlmutter, I am going to show you what has been marked Government Exhibit 749-A, which is a portion of a larger volume.

Let me ask you, first, if you can recognize this volume (handing).

A Yes, I can.

Q What is it?

A This is the office procedure manual for Rio Rancho.

Q Effective as of when?

A Currently.

Q I know this is a current book, because we keep updating it and what's in here is current.

Q Referring to 749-A for identification, there is a page which says,"Dinner party procedure, revised November 1972."

A Then in answer to your last question, the answer is yes, that was used as of December of 1973, I think your question was.

It means it has not been changed.

Q Okay.

Let me turn to the next page where there is a diagram.

Is that the same diagram that appears in 749?

A Yes, it is.

Q And, for the record, is 749-A for identification the same as 749 for identification?

A Yes, it is.

Q And is the third page of 749-A for identification the same as the third page of 749?

A Yes, it is.

Q And what about the fourth page?

A The fourth page is different.

Q Okay.

The fourth page says, in Government Exhibit 749 for identification, revised as of February 1973, is that correct?

A Yes, ma'am.

Q Referring you to the page in 749 for identification which says "Revised October 1971," is that the same page that appears in 749-A for identification?

A Yes, it does.

MS. HYNES: Your Honor, I will renew the offer of Government Exhibit 749. I have eliminated the pages that have either not been identified by this witness as currently in use or do not have a date on them.

THE COURT: Show them to Mr. Arkin.

(Pause)

MR. ARKIN: Just a couple of questions.

VOIR DIRE EXAMINATION

BY MR. ARKIN:

Q Mr. Perlmutter, with respect to Government's Exhibit 749 for identification, is this a document which was created all at one time?

A No. It may have been created at different stages.

Q I mean, this document itself is not -- let me count the pages.

This six page document was not created as a single document, was it?

A It may not have, no.

Q And, indeed, the pages which are clipped, not stapled but clipped together, may have been put together at various times?

A That's true.

Q And you don't know when they were put together, isn't that so?

A That's true.

Q And it could very well have been that, say, page 1 of 749 never was annexed to page, say, 5 of 749, isn't that so?

A That's true.

MR. ARKIN: Your Honor, I --

THE COURT: Let me see it.

MR. ARKIN: Yes.

(Handing)

THE COURT: This could be submitted as individual pages and that overcomes your objection.

MR. ARKIN: Oh, yes, your Honor. It isn't the idea of having it submitted --

THE COURT: This is not being offered as a document, it is being offered as several pages as one exhibit.

MR. ARKIN: On that basis, your Honor, we have no objection, provided --

THE COURT: I thought that was clear. We made that clear inside.

The objection is overruled.

(Government Exhibit 749 received in evidence) xxx

CONTINUED DIRECT EXAMINATION

BY MS. HYNES: xx

Q Mr. Perlmutter, are the pages of the procedure manual numbered internally in the company?

A Yes, they are.

Q And at the bottom of Government Exhibit 749

A 3362

in evidence, the first page says revised November 1972, and there is a number 301.

A That's right.

Q Is that the number assigned to that page?

A Yes, it is.

Q Then the second page is 301-A, is that correct?

A That's right.

Q So that means in the procedure manual --

A That would be the second page.

Q That would be the second page of this section?

A Yes.

Q And the third page of Government Exhibit 749 in evidence is number 302?

A Yes, it is.

Q So that is the third page?

A True.

Q And that page says it was revised as of December 1973?

A Yes, ma'am.

Q So 302 was revised as of December 1973, is that correct?

A Yes, ma'am.

Q And page 303 is the next page, is that correct?

A Yes, it is.

Q And that was revised as of February 1973?

A That's right.

Q And 304 is the next page?

A Yes.

Q And that is revised as of December 1973?

A Yes, ma'am.

Q And 305 is the following page and that is revised as of October 1971?

A Yes, ma'am.

Q As you have testified that with respect to this October of 1971 revised page number 305, that that is still the one that is currently in use, is that correct?

A Yes, ma'am.

Q And for Government Exhibit 749-A for identification, is there also a number 305 assigned for that page in the current manual?

A Yes, there is.

Q So Mr. Arkin asked you whether these pages could have been mistakenly clipped together --

THE COURT: Wait, wait, wait. The document is in. Why beat the horse anymore? I have overrule the objection.

His question only went to voir dire, not cross examination of the witness.

Q Mr. Perlmutter, I am going to show you Government Exhibit 750 for identification (handing).

Was that letter a part of the procedure manual at any time during the period of your employment?

A Yes, it was.

Q And to the best of your recollection, during what period of time was that letter a part of the procedure manual during your period of employment?

A I believe it was from the time I started the procedure manual until maybe late '72, when Sherman Lurie came with the company and started to revise some of these letters.

Q So when did you start the procedure manual?

A The beginning of 1971.

Q So from the beginning of 1971 until at least 1972 that letter was used in the procedure manual?

A That's right, yes.

MS. HYNES: I offer it.

MR. ARKIN: We have no objection.

(Government Exhibit 750 received in evidence)

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MS. HYNES: Your Honor, may I read from Government Exhibit 750?

THE COURT: Yes.

(Ms. Hynes read from Government Exhibit 750 in evidence to the jury)

Q What was the procedure for using that letter, Government Exhibit 750 in evidence?

A Usually, after the party a customer had purchased, the salesman would contact the customer with this letter just to tell the customer -- let the customer know he is there if they need any help, if they want to go on any trips and also to use this customer for referrals, any friends of theirs that may be interested in attending dinners and purchasing.

MS. HYNES: Your Honor, with respect to Government Exhibit 203, I will offer all of the pages that have a date on them in this manual.

Let me first ask the witness:

Q Mr. Perlmutter, for example, in Government Exhibit 203 for identification, the first page says revised July 1973, the last paragraph on the first page is No. 8, and then there is a second page No. 9 without a date.

Is that still the same revision?

A Yes, it would be the same, probably the same part of the same section.

MR. ARKIN: We have no problem with this.

(Government Exhibit 203 received in evidence)

MS. HYNES: If I might just have a moment, your Honor.

(Pause)

MS. HYNES: May I have this marked 749-B for identification, please.

(Government Exhibit 749-B marked for identification)

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Q Mr. Perlmutter, I will show you Government Exhibit 749-B for identification, and ask you to compare it with -- there is a page No. 987 on 749-B for identification.

Government Exhibit 203 has a page 958.

Are those two pages the same?

Would you please examine it?

A Yes, it is the same.

MS. HYNES: Your Honor, I would offer as part of 203 the page --

THE COURT: 203 is in. Why do you want to offer a page?

MS. HYNES: Because I have only offered, your Honor, pages that are dated.

THE COURT: Yes?

MS. HYNES: The page that I am now offering is a page which does not have a date but the witness has been able to identify it as the same as the procedure manual currently in use.

THE COURT: Which is what?

MS. HYNES: Which is in the procedure manual page 958 at the bottom of the page.

MR. ARKIN: That is page 958 or 949?

MS. HYNES: The number at the bottom of the page.

MR. ARKIN: That is 958?

MS. HYNES: Yes.

(Pause)

MR. ARKIN: We have no objection.

MS. HYNES: This is part of 203.

Let me mark that page 203-B.

(Government Exhibit 203-B received in evidence)

xxx

THE COURT: You have this in 203.

Did it come out of 203 and be a separate page?

MS. HYNES: Your Honor, we offered the pages in 203 which had a date at the bottom so it can be substantiated.

THE COURT: Therefore, this does not belong in this volume, does it?

Take it out and offer it separately.

The volume is marked 203.

This 203-B is not part of 203 as offered and as in. Take it out and offer it separately.

MS. HYNES: I am trying to make the point it is part of the procedure manual, however.

THE COURT: 203 is in evidence. That page is in 203.

Now you tell me it is not covered by 203. If it is not covered by 203, take it out. If it is covered by 203, you don't need 203-B. I don't know which one you want, but you can't have it both ways.

MS. HYNES: Let me clarify.

nd t

Q 203-B is a part of the procedure manual; is that correct?

A Yes, it is.

MS. HYNES: Your Honor, I would ask to have it included, which is page 942, as part of 203.

THE COURT: All right, leave it in as part of 203. There is no 203-B.

MS. HYNES: Thank you.

Your Honor, may I read from a portion of 203, please?

THE COURT: Yes.

THE COURT: Yes.

(Ms. Hynes read from Government Exhibit 203 in evidence to the jury)

Q Mr. Perlmutter, is that a commercial and multi-dwelling contract?

A Yes, it is.

(Ms. Hynes continued reading from Government Exhibit 203 in evidence to the jury)

Q Mr. Perlmutter, let me show you again Government Exhibit 1066-A in evidence. These are the delinquency notices that you were able to recognize yesterday.

A Yes, ma'am.

Q Are these the only delinquency notices that were used by the company to your knowledge?

A There may have been others that are not in here. I don't know.

Q Do you know what -- are you familiar with the term money letter?

A Yes.

Q What is the money letter?

A Money letter was a delinquency letter that was put together which had dollar amounts on the side and it was put together and only used for a very short time because it was very complicated and nobody understood it including myself.

Q Let me show you Government Exhibit 1066-A in evidence and point to a page numbered 5512.

Is that a money letter?

A Yes, ma'am.

Q Was that used in 1971?

A Yes, ma'am, it was.

Q I point to page 5528 of 1066-A in evidence, is that a money letter?

A Yes, ma'am.

Q Was that used in 1972?

A Yes, I believe it wasthe early part of '72, yes.

Q I show you what has been marked Government Exhibit 1046 for identification and ask you to take a look at that.

Will you read that memo to yourself.

(Pause)

Q Does that memo refer in part to the money letter?

A Yes, it does.

Q Did you receive a copy of that memo?

A Yes, I was copied on it.

MS. HYNES: I offer 1046 for identification.

MR. ARKIN: No objection.

xxx (Government Exhibit 1046 received in evidence)

Q You referred yesterday, Mr. Perlmutter, to Barbara Mackin. I believe you testified that she was the head of the direct mail department.

A For a period of time, yes.

Q I show you Government Exhibit 540 for identification.

Did you receive a copy of that?

A Yes, I am copied on it.

Q Who did Barbara Mackin report to?

A Dan Friedman until Sherman Laurie came in the company and then she reported to Sherman Lurie.

Q When did Sherman come with the company?

A Late '72.

MS. HYNES: I offer 540.

(Pause)

MR. ARKIN: No objection, Ms. Hynes.

(Government Exhibit 540 received in evidence)

xx

THE COURT: Let me see it.

(Pause)

Q Mr. Perlmutter, you testified that when you first began to assist Daniel Friedman in I believe it was 1970 and 1971, he was treasurer.

A Yes,he was.

Q Did there come a time when Mr. Friedman assumed a different position in the company?

A Yes.

Q What was that?

A He became vice-president of sales.

Q When was that?

A I think it was May or June of 1971. Around that period.

Q Did you continue to work for Mr. Friedman when he was vice-president of sales?

A Yes, I did.

Q Was he your immediate superior?

A Yes, he was.

Q Did you report to anyone else?

A No, I didn't.

Q What were your responsibilities when Mr. Friedman became vice-president of sales?

A My responsibilities were to handle the sales administration for Mr. Friedman. To gather the statistics that happened at an office and to work on the procedure manual and supply him with this information.

Q What kind of statistics are you talking about?

A The information on the mail results, the number of people at a party, the volume of business done by the offices and to supply them whatever was necessary to do business.

Also, almost anything that goes on in an office.

Q When the statistics that you spoke about -- these are statistics of dinner parties, for example?

A Results, yes.

Q Results of the dinner parties?

A Yes.

Q What, if anything, did you do with those statistics?

A Turned them over to Dan Friedman for his review.

Q Did you turn them over to anyone else?

A Not in the early days, no.

Q Well, did you at any time turn them over to any other corporate officer other than Dan Friedman?

A At some times parts of it I showed to Mr. Carity.

Q What parts would you review with Mr. Carity?

A Maybe how many invitations were mailed against what the response rate was.

Q Were there different types of dinner parties that were held, different -- withdrawn.

Were there different types of selling programs used by the company?

A Yes, there were.

Q What were the selling programs that were used?

A They had the regular dinner party, which was a mail-out dinner party.

They had a homesite owner referral party.

We had a homesite owners were invited to a reception and to bring a guess so we can sell the guest.

We had a home sit program where we obtained leads either through advertising in the media or through telephone solicitation or direct mail solicitation and appointments were set up for salesmen to visit a customer in their homes and make a presentation.

Q Was there also a hospitality suite?

A A few of them. It wasn't a general program.

Q Was there a hospitality suite in New York?

A Yes, there was for a period of time, yes.

Q When you first came to the company in 1969 was there a hospitality suite at that time?

A I don't believe so.

Q Was there at any time at the time that you were employed by the company?

A Yes, there was.

Q Where was the hospitality suite located?

A 16 West 61st Street.

Q That was the corporate headquarters?

A Yes, also the offices of one of the O&O operated brokers.

Q Which was that?

A ATC.

Q ATC?

A Yes.

Q Did ATC -- did there come a time when ATC moved from the main headquarters at 16 West 61st Street?

A Yes, ma'am.

Q When was that?

A Sometime in 1972, I believe.

Q So up until 1972 was there a hospitality suite at 16 West 61st Street?

A For a period of time, yes.

Q What was the hospitality program?

A Hospitality was the same basically as a dinner program only they were invited in to a room at our headquarters rather than go to various different restaurants. I don't know, but I believe the presentation was basically the same.

Q Did you receive reports on sales made at the hospitality suite?

A Yes, we got statistics.

Q What about in OPC program?

A Yes, we got statistics on OPC.

Q What about a VIP program?

A VIP I don't recall getting statistics because that was an individual program just run by one office.

Q What office ran that program?

A ATC.

Q Did ATC report to you at all on sales that were made as a result of the VIP program?

A Not that I recall, no. Not in that form. Just sales made by the office.

Q What form are you talking about then?

A Volume. Let's say we wouldhave -- they would report what their volume of business was for the month and it would be broken down by the party program, the home sit program, hospitality, yes, and also VIP so there were separate categories.

Q Are you also familiar with a program run by ATC called an investment seminar?

A No, I am not.

Q Do you know if there was an investment seminar run by ATC?

A I had heard there was, but I don't know anything about it.

MR. ARKIN: Move to strike the answer.

THE COURT: I will let him state that he heard of the program.

Q Do you recall who you heard that from?

A Not particularly, no.

Q Did you have any responsibilities other than the statistical material -- I take it you analyzed that statistical material, was that your job?

A I broke it down in a readable form for Mr. Dan Friedman to analyze.

Q When you broke it down into that form, you gave that to Dan Friedman?

A Yes, I did.

Q Did you give it to any other corporate officer?

A On occasion parts of it, as I said, to Mr. Carity.

Q Did you have any responsibilities with respect to sales offices?

A I am sorry, I didn't hear your question.

Q Did you have any responsibility in connection with sales offices?

A Yes, I was responsible for the administrative functions in the sales office per parts of the procedure manual.

Q Did you have any responsibility in connection with setting up new sales offices?

A Yes, I did.

Q What were those responsibilities?

A To make sure that the proper lease was signed; that the proper furniture was bought at the price that we wanted it to be purchased at; that a bank account was established.

The notification at the Post Office, everything that is general to postage meter, everything general to getting an office started.

Q Did you have occasion to visit different sales offices?

A On rare occasions, very rare.

Q Did you visit any sales offices out of the New York area?

A Yes, I did.

Q What sales offices did you visit?

A I visited an office in Chicago and an office in Texas.

Q What was the purpose of the visit of the office in Texas?

A Basically to go over -- it was a pretty new office --- to go over how things were set up.

Q Approximately when was that?

A Sometime in '72. It could have been March or April, sometine in that period.

Q Did you have occasion to attend a sales dinner in Texas?

A Yes, I did.

Q Was that a sales dinner for Rio Rancho Estates?

A Yes, it was.

Q Was that the first dinner that you had ever attended for Rio Rancho Estates?

A The first dinner, no, ma'am.

Q What was the first dinner that you had attended?

A I had attended a homesite owner referral party, Sunday dinner, big dinner, that ATC had had in the Queens area.

Q Was that a dinner that was run by Mr. Leonard Geller?

A Yes, ma'am.

Q Was Mr. Leonard Geller the speaker at that dinner?

A Yes, ma'am.

Q Approximately when was that?

A Sometime in late '72 probably. Sometime in '72.

Q The Sunday dinner that you just referred to, was that before you attended the dinner in Texas or after?

A I believe it was after.

Q After?

A I think so.

Q Did you just testify that you had attended other Rio Rancho dinners prior to the dinner you had attended in Texas?

A I really don't recall the dates, whether it was before or after, because I attended very few Rio Rancho dinners.

It might have been before or after.

Q Will you tell us all of the occasions that you can recall when you said you attended a dinner in Texas for Rio Rancho and you attended a Sunday referral dinner?

A For ATC.

Q In New York?

A Right.

Q Were there any other dinners that you attended for Rio Rancho?

A I don't recall any other ones.

Q What about in the Chicago area?

A That was a home sit program where they didn't have dinners.

Q I am going to show you what has been marked Government Exhibit 527 for identification and ask you if you can identify that.

A Yes, I read this and I have my initials on it.

Q Is this a script for a dinner party presentation?

A Yes, it is.

Q Does this script fairly and accurately represent the presentation that you heard at the dinner party you attended in Texas sometime in 1972?

A It is similar, yes.

MS. HYNES: I offer 327.

(Pause)

VOIR DIRE EXAMINATION

BY MR. ARKIN:

Q When did you read this, Mr. Perlmutter?

A I read it in Ms. Hynes' office.

Q When?

A A few days ago.

Q You say this was similar to something you heard in Texas in 1972?

A Similar, yes.

Q Were there differences?

A Yes, there were.

MR. ARKIN: We object, your Honor.

THE COURT: Objection sustained unless you can point out what the differences were.

XXX BY MR. HYNES:

Q What were the differences, Mr. Perlmutter?

A The differences primarily were all the numbers that are used in here. I haven't the vaguest recollection of what the numbers were or if these numbers were used.

Q What numbers are you referring to?

A Well, part of the presentation here it talks about control of a certain amount of money by a certain amount of money, I don't know what the numbers were that were used.

It talks about the amount of money that the interest rates that are given in the bank. What other types of places like savings and loans or other places give. I haven't the faintest idea of the number of mutual funds give.

Q Are you saying that -- let me ask you -- at the dinner party that you attended in Texas, were there comparisons between an investment in land at Rio Rancho and other types of investments?

A Yes.

Q Such as stocks, bonds, banks, mutual funds, is that correct?

A Yes.

THE COURT: We will have a recess.

(Recess)

(Jury left the courtroom.)

THE COURT: What's the purpose of getting this specific presentation?

MS. HYNES: Your Honor, there were scripts that were produced by the company as scripts that were utilized. There are basically three or four.

There is one that was used -- the first one that was used in 1966. That was replaced by one in 1968, which is in evidence.

This one is 1971.

Then there is one in 19 -- the Steve Bondy presentation, which is in August of 1972. This witness identifies this as the speaker's presentation he heard in Texas basically Mr. Perlmutter I expect his testimony to be that while there were various rates of return that were given on different forms of investment, he doesn't specifically recall whether these figures were the exact rates of return that he heard at that dinner party, but there were rates of return.

Basically the point --

THE COURT: That's already known by the jury.

MS. HYNES: The point, your Honor, is that there are -- there has been testimony that the speaker's presentation, there were some changes in language, but they were basically the same. Particularly with respect to investment, sometimes it was put in one way and sometimes it was put in another way.

THE COURT: This witness says he can't tell you.

MS. HYNES: No, this witness is saying in terms of the rates of return. I am saying about the language that was used in portraying the investment. This script talks about this is a land investment program and goes on.

These are some of the quotes that appear in the indictment. This is a script that was used --

THE COURT: How does that differ from the one already in?

MS. HYNES: Maybe the one already in may present it in slightly different language. I am simply saying that they are not identical.

THE COURT: What difference does it make as far as your case is concerned?

MS. HYNES: I think it makes a great deal of difference, your Honor, because there are different ways of phrasing it. If they phrase the investment aspect differently over the years --

THE COURT: I am asking you. You are giving me generalities. I want specifics to see whether it is justified wasting this time on this question of the financial leverage as it has been called in this trial.

As I said the other day, it has been in ad nauseum. Everybody tells you they got it. Does it make any difference whether the bank is 6 or 6.5 per cent.

MS. HYNES: I agree. I don't think there is a substantial difference. This witness' testimony is that that is the only difference he recalls.

THE COURT: I am asking you why we are wasting all this time getting this one in when you already have one in where we have umteen witnesses who have described it for us.

MS. HYNES: Because there is other language in this script which does not appear.

THE COURT: I am now asking you what would justify wasting this time.

MS. HYNES: Okay, I will try to tell you, Judge.

THE COURT: That was my first question to you. Now it took several minutes to get back to it.

I don't think it makes one iota of difference if there is a shading in the meaning. Every witness has said the story and told of the financial leverage approach. The jury understands it.

I want to know what is different in this one to justify wasting this time.

MS. HYNES: Quotes from this particular script were taken out and put in the indictment as quotes that were used in order to sell the land as a financial investment.

THE COURT: That doesn't mean that it has to come in if you have something else in to satisfy it.

MS. HYNES: I wuld have to take time, your Honor, and analyze --

THE COURT: Take it because I am not going to waste any more time on this. I thought I indicated the other day that I didn't want to hear any more and if I didn't specifically say financial leverage I now add it.

MS. HYNES: I understand your Honor's ruling. This is the last script that we are introducing. There are basically the four scripts --

THE COURT: I am asking you why you need this one. Why you are attempting to get it in. I have made it clear a long time ago you got the first one in on the basis that it generally represented what was used during the entire period and that's how it came in. Mandel says I wrote it and it was changed from time to time, not in material aspects.

On that basis it came in and it has been referred to. When every witness who took the stand and was a purchaser and said he saw a film or presentation, we all assumed it was that presentation with slight modifications and that satisfies your need for the proof.

(Recess.)

(In open court without the presence of the jury.)

THE COURT: What's the difference, Ms. Hynes?

MS. HYNES: In light of your Honor's statement, my concern really was the specific quotes in the indictment. I will withdraw the offer.

THE COURT: I don't think anybody is going to get up in summation and say you didn't prove exactly the words set forth in the indictment. You have the witnesses' testimony as to what they were told. 6 per cent bank interest, 12 per cent stock and 25 per cent on real estate. You have got that in three or four times. Nobody is going to say you didn't prove exactly this. I will slap them down in the charge if we get to that point. They know that.

MS. HYNES: Then I will withdraw the offer.

THE COURT: The understanding around here is you already have in the basic materials that were used at all these dinners and everybody who has testified who was a purchaser testified against that background.

MS. HYNES: Exactly.

THE COURT: All right, so let's not waste any more time on it.

Bring the witness and the jury in.

I don't see whether this fellow went to a dinner in Texas before or after Queens and which one came first.

(Jury present.)

THE COURT: You may proceed.

BY MS. HYNES:

Q Mr. Perlmutter, directing your attention to the period of time when Mr. Dan Friedman was vice president in charge of sales, who hired managers of sales offices?

A At the onset when he became vice president of sales, the managers were hired, I believe, by the area directors or regional managers. They might have been interviewed by Mitchell Roberts, I am not sure.

Q What responsibilities did Mr. Friedman have in connection with hiring managers?

A I believe he interviewed them in the early days.

THE COURT: You keep saying early days. What do you mean by early days as opposed to later days? We are talking anywhere from 1961 to 1975. You tell us what you mean early days, later days. I don't want to keep having to interrupt you all the time. I want specifics from you.

THE WITNESS: Yes, sir. I am referring to the time when -- by early days I am referring to the time when Mr. Friedman took over as vice president of sales, which was sometime around the middle of 1971.

Q My question was directed to the time when Mr. Friedman took over as vice president of sales, that was in '71?

A Yes, ma'am.

Q Okay. What was his responsibility in connection with hiring managers?

A He would interview the managers at that time.

Q I will show you --

A A procedure was set up a little later.

Q I show you Government Exhibit 517 for identification and ask if you recognize that and if you received a copy of that.

A Yes, I did.

MS. HYNES: I offer 517.

(Pause.)

VOIR DIRE EXAMINATION

BY MR. ARKIN:

Q Mr. Perlmutter, with respect to Government Exhibit 517 for identification, are you able to identify the handwriting in the upper right-hand corner of the first page and the bottom of the last page?

A No.

Q You don't know whose handwriting that is?

A No.

Q You don't know when it was put there?

A No.

MR. ARKIN: With the exception of the handwriting, I have no objection.

THE COURT: Do you want to delete the handwriting?

MS. HYNES: Let me ask the witness some questions.

BY MS. HYNES:

Q Mr. Perlmutter, was it a practice to distribute memos such as Government Exhibit 517 for identification to Mr. Chester Carity and Mr. Howard Friedman, if you know?

A At times certain memos. I couldn't specify which memos. Certain of them.

THE COURT: There wasn't any practice or procedures established?

THE WITNESS: No, sir.

MS. HYNES: Your Honor, can I just show you the handwriting Mr. Arkin is referring to on the last page?

THE COURT: Yes.

(Pause.)

THE COURT: Did you see this document?

THE WITNESS: Yes, I did.

THE COURT: Was this showed to you?

THE WITNESS: Yes, sir.

THE COURT: Was that handwriting on it when you saw it?

THE WITNESS: Yes, sir.

THE COURT: It was. It is in.

MR. ARKIN: If your Honor please, at what time was the handwriting on it?

THE COURT: When he saw it. I assume it was around the time of March 8, 1972.

MR. ARKIN: May I ask him that, your Honor?

THE COURT: You may.

VOIR DIRE EXAMINATION

BY MR. ARKIN:

Q Did you see that handwriting on March 8, 1972 or thereabouts?

A I have no recollection.

Q You saw it in Ms. Hynes' office, isn't that what you meant?

A Yes. You asked me if I saw it.

THE COURT: I will have to sustain the objection.

MS. HYNES: The government will offer the exhibit without the handwriting, 517.

THE COURT: It will have to be deleted before the jury sees it.

MS. HYNES: We will do that, your Honor.

XXX (Government Exhibit 517 received in evidence.)

MS. HYNES: Your Honor, may I read from a portion of this?

THE COURT: Yes.

(Ms. Hynes read from Government Exhibit 517 in evidence to the jury.)

Q Did you ever see tapes in Mr. Daniel Friedman's office?

A Yes, I did.

Q When did you see tapes in Mr. Friedman's office?

THE COURT: What kind of tapes? It could be boogie woogie tapes. What kind of tapes?

Q Can you describe the tapes that you saw, what they looked like?

A I saw a normal size cassette.

Q Cassettes?

A Little cassettes, yes.

THE COURT: Any labels on them?

THE WITNESS: I didn't see any labels.

THE COURT: You didn't know what they were?

THE WITNESS: No, sir.

Q Did there come a time when you heard tapes being played in Mr. Dan Friedman's office?

A I had heard a tape being played in Mr. Friedman's office. I couldn't distinguish what it was. I wasn't in his office.

Q Was it a tape of a sales presentation?

A I don't know. It was a tape.

Q Did you ever tell any representative of the United States Attorney's office that you heard tapes of sales presentations being played in Mr. Daniel Friedman's office?

MR. ARKIN: Objection, your Honor.

THE COURT: Overruled.

A I don't believe I said that. I had said that I saw cassettes in Mr. Friedman's office and I heard tapes being played. I don't recall if I said it was a sales meeting.

Q Tell us what you heard.

A I heard a tape being played. I don't know whose voice it was or what.

Q I am not asking you whose voice it was.

THE COURT: Do you know the content?

THE WITNESS: No, sir, I don't know the content.

I heard a tape being played.

Q You were able to hear it, correct?

A From a cassette, yes.

Q What was being said?

A Just -- did I say -- it was behind closed doors as I had told you and I don't know what was being said. I know a tape was being played and I know Mr. Friedman had tapes in his office, cassettes.

Q You were able to hear the tape, is that correct?

THE COURT: He heard the sound of a tape. He couldn't distinguish the words that were being said. You can hear a radio being played but not know what is being said.

A I believe I told this to the U.S. Attorney.

Q Do you know whether Mr. Daniel Friedman received tapes of sales presentations pursuant to his request?

A Yes, he did.

Q How do you know that?

A Because he had requested it from the area directors and certain people and in speaking to some of the area directors I know they had sent it in.

Q Do you know whether Mr. Daniel Friedman ever listened to those tapes?

MR. FLEMING: Your Honor, I move to strike that.

THE COURT: Sustained.

Q Did you ever have a conversation with Mr. Daniel Friedman in connection with his receiving tapes of sales presentations?

A Yes.

Q What was that conversation?

A The conversation was that he had requested them to be sent in on a routine basis and they were never sent in on a routine basis.

Q Were they sent in at all?

A Yes, some were.

Q Did he tell you some were sent in?

A Yes.

Q Did he tell you he listened to the ones that were sent in?

A No, he didn't.

MS. HYNES: The government offers Exhibit 530 in evidence.

MR. FLEMING: We object, your Honor. No foundation.

THE COURT: Let me see it.

(Pause.)

THE COURT: Lay a foundation.

Q Mr. Perlmutter, who is Lloyd Simon?

A Lloyd Simon was hired by the company for training purposes, to do sales training and to prepare a sales training manual.

(Continued on next page.)

Q Who did he report to?

A Daniel Friedman.

Q Who is H. Harris?

A Harry Harris was employed by the company. He reported also to Danny Friedman, Dan Friedman. And he helped me with composing the manual and did some traveling to visit the various offices for Daniel Friedman.

Q Who is Lou Koniecki?

A Lou Koniecki is a longtime employee of AMREP, much prior to my time.

Lou Koniecki did, also, some training of Rio Rancho product knowledge to managers and sales people.

Q What are area directors?

A Area directors are responsible for a particular geographic area, depending on where the offices were located.

Q Were there area directors for Rio Rancho Estates?

A Yes, there were.

Q Were there from time to time area director meetings held?

A Yes, there were.

Q And how frequently were these meetings held?

A During 1972 and 1973, they were held, I would say, at least four, five times a year.

Q Who ran the area directors meetings?

A Daniel Friedman.

Q Were party presentations discussed at these meetings?

A I don't recall specifically party presentations were discussed. Many topics were discussed at the meetings.

Q Do you recall whether the topic of taping a sales presentation was discussed at these area director meetings?

A That might have been, yes.

MS. HYNES: Your Honor, I renew our offer. There was no authenticity objection to this document.

MR. FLEMING: Let me see that, please.

MS. HYNES: Yes (handing).

VOIR DIRE EXAMINATION

BY MR. FLEMING:

Q Mr. Perlmutter, did Lloyd Simon handle Silver Spring Shores in 1973?

A Yes, he did.

Q Was that his responsibility?

A I believe so; yes.

Q Did you ever see this 530 for identification?

A I don't know what it is. I haven't --

MR. FLEMING: I object on that basis, your Honor.

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